

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 144 OF 2020S

STATE

VS

JOELI CAGILABA

Counsels : **Ms. M. Konrote for State.**
Mr. S. Ratu and Mr. A. Waqanivalagi for Accused.

Hearings : **1 and 2 August, 2022.**

Judgment : **12 August, 2022.**

Sentence : **23 September, 2022.**

SENTENCE

1. In a judgment delivered on 12 August 2022, the court found you guilty and convicted you on the following counts in the information:

“Count 1

Statement of Offence

RAPE: *Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.*

Particulars of Offence

JOELI CAGILABA *between the 6th day of March 2019 and the 7th day of March 2019 at Navutulevu in Navua in the Central Division had carnal knowledge of T.L. without her consent.*

Count 2
Representative Count
Statement of Offence

RAPE: *Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.*

Particulars of Offence

JOELI CAGILABA *between the 1st day of April 2019 and the 10th day of April 2020 at Navutulevu in Navua in the Central Division had carnal knowledge of T.L. without her consent.*

2. The brief facts of the case were as following. The female complainant, at the time of the rapes, was 15 years old. The accused appeared to be 29 years old, at the time of the offence. There was a 14 years age gap between the two. The accused, at the time of the offences, was married to the complainant's first cousin. On the first count, between 6 and 7 March 2019, the complainant was sleeping at her auntie's house. She was sleeping on a mat on the floor. She wore a shorts, panty and t-shirt to bed. The accused came to her, laid on top of her so as to pin her to the floor with his weight, block her mouth with his palm to stop her raising the alarm, then used his other hand to take off her shorts and panty. He then parted her legs and inserted his penis into her vagina for about 2 minutes. He later threatened the complainant not to tell anyone about the incident.

3. Between October to November 2019, the complainant was again sleeping in the living room in her house on the floor, at night. She was lying on her back facing up. The accused came to her and repeated what he did above to her. His modus operandi was similar. The complainant said, the accused repeated the above episodes to her again in April 2020. The accused had been tried and convicted in the High Court after a 2 day trial.

4. The offence of rape carried a maximum sentence of life imprisonment (see Section 207 (1) of the Crimes Act 2009.). Parliament therefore views the offence as a serious one. It violates the dignity of a person. It is an unwarranted intrusion into the privacy of a person. It is an ultimate act of showing utter disrespect to a person. Therefore those who commit this offence, must expect a lengthy prison sentence to restore the balance, the harmony and atonement to the victim. For the rape of a child, that is, anyone less than 18 years old, the tariff is a sentence between 11 and 20 years imprisonment. I refer to the authority of **Gordon Aitcheson v The State**, Criminal Petition CAV 012 of 2018, Supreme Court of Fiji. Of course, the final sentence will depend on the mitigating and aggravating factors.
5. The aggravating factors in this case were as follows. The accused was the complainant's uncle. He appeared to be 29 years old and the complainant was 15 years old, an age gap of 14 years. He certainly abused the complainant's trust in him. He was supposed to look after her, care for her and counsel her to be a better citizen for tomorrow. However, he did the unthinkable by raping her. Again, this was a case of a rape of a child, who was less than 18 years old. Children ought to be protected and a heavy prison sentence will be given to warn other would-be offenders. You have caused untold miseries to the complainant and her family. You had shown no respect to the complainant's right as a human being and you need to be punished accordingly.
6. The mitigating factors were as follows. At the age of 38 years, this was your first offence. You were remanded in custody for 5 months 22 days in total, while awaiting trial and sentence.
7. On count no. 1 (rape), I start with a sentence of 11 years imprisonment. I add 4 years for the aggravating factors, making a total of 15 years imprisonment. For time already served while remanded in custody, I deduct 6 months, leaving a

balance of 14 years 6 months. For being a first offender at the age of 38 years old, I deduct 4 years 6 months, leaving a balance of 11 years imprisonment. For count no. 1, I sentence you to 11 years imprisonment.

8. For count no. 2, I repeat the above process and sentence.

9. The summary of your sentences are as follows:

- (i) Count No. 1 - Rape : 11 years imprisonment.
- (ii) Count No. 2 - Rape : 11 years imprisonment.

10. Because of the totality principle of sentencing, I direct that the above sentences are to be made concurrent to each other, making a final total sentence of 11 years imprisonment, with a non-parole period of 9 years imprisonment.

11. Mr. Joeli Cagilaba, for offending against the complainant as alleged in count no. 1 and 2 of the information, I sentence you to 11 years imprisonment, with a non-parole period of 9 years imprisonment, effective forthwith.

12. The name of the complainant is permanently suppressed to protect her privacy.

13. You have 30 days to appeal to the Court of Appeal.



Solicitor for State
Solicitor for Accused

: **Office of the Director of Public Prosecution, Suva**
: **Legal Aid Commission, Suva.**



Salesi Temo
JUDGE