

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 68 OF 2021

BETWEEN : STATE

AND : PAULA MASILEVU

Counsel : Ms L Latu for the State
Ms M Manulevu for the Accused

Date of Hearing : 28 February 2023

Date of Sentence : 03 March 2023

SENTENCE

1. The charges against the accused are as follows:

COUNT 1

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

PAULA MASILEVU, on an unknown date between the 1st day of January 2020 and the 31st day of December 2020, at Dreketi in the Northern Division, penetrated the vagina of **E.K.**, a child below the age of 13 years with his finger.

COUNT 2

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

PAULA MASILEVU, on an unknown date between the 1st day of April 2021 and the 30th day of April 2021, at Dreketi in the Northern Division, had carnal knowledge of **E.K.**, a child below the age of 13 years.

COUNT 3

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

PAULA MASILEVU, on an unknown date between the 1st day of August 2021 and the 31st day of August 2021, at Dreketi in the Northern Division, had carnal knowledge of **E.K.**, a child below the age of 13 years.

2. When the accused was arraigned on these charges, he pleaded guilty to count one and not guilty to counts two and three.
3. On 26 July 2022, the High Court sentenced the accused to 9 years imprisonment (less 11 months for remand period) for the offence charged in count one.
4. On 10 February 2022, the accused indicated to the court his intention to change his plea and plead guilty to counts two and three.

5. On 28 February 2022, the accused pleaded guilty to counts two and three and admitted facts tendered in support of the charges as follows:

Count 2

1. Sometimes in April 2021, the child complainant was collecting firewood with her sister and cousin near the cemetery at the village. The sister and the cousin took the lead to the village and the child complainant was still tying her bundle of firewood when suddenly the accused appeared and stood in front of her, she was frightened since she was alone, the accused grabbed both her hands, the child complainant screamed but no body heard her. The accused took off his t-shirt and tie it around the complainants' mouth to stop her from screaming, he then dragged the child complainant to the nearby mango tree. He made her lie down on the grass and pulled the child complainant shorts and panty, the accused was only wearing a black vest, he took out his "**polo**", meaning penis and forcefully inserted it in her "**pi**", meaning vagina. The complainant stated it was painful, she cried the accused didn't stop, he continued with what he was doing until she saw his polo all wet and sticky. The accused told her "**mai dramica oku polo**", meaning lick my penis, the child refused, she stood up, collect her firewood and slowly made her way to the village. She could see the accused walking towards the river, he invited her to join, and the child ignored him and went home. The complainant washed herself when she got home and she could feel burning sensation between her things and vagina and this was happening till the next day.
2. The child complainant never disclosed the incident to anyone since the accused had told her not to inform anyone or he will do something to her. In April 2021, the child complainant, was 11 years old and under the age of 13 years as per document **A** above.

Count 3

3. Sometimes in August 2021, the child complainant was sent by her mother to buy some noodles and tuna for their dinner from the shop. When she reached

the shop she met the accused, he took the money from her and grabbed her hands and took her to his house, inside the house near the bedroom, the accused pulled her panty off and forced himself on top of her and inserted his penis inside her vagina and moved in an outward motion. He again told the victim not to tell anyone, the child cried and couldn't do anything to stop him. The accused said that he would give her some bean but didn't and she went home without the noodles and tuna because the accused had told her that the shop was closed.

4. Again in August 2021, the child complainant was 11 years old and under the age of 13 years.
5. This matter came into light on the 10th of September 2021 whilst the child complainant was having breakfast at her aunt's house. Her aunt asked what was happening at the side of their village, this was the first time, the complainant told her aunt what the accused had done to her.
6. Then on the 11th of September, 2021, the aunt then relayed the information to the complainant's mother who then reported the matter to the Police.
7. The child complainant was medically examined at Seaqqa Health Centre on the 11th of September 2021, there was nil injuries, however her hymen was not intact (**Medical report of E.V. attached and annexed as "B"**).
8. On the 12th of September, 2021, the Accused was arrested and escorted to the Seaqqa Police Station where the Accused was interviewed under caution and confessed to the allegation. The Accused was then charged thereafter.

Caution Interview

9. For the second count, the accused admitted dragging the complainant under one mango tree, laid her down, pulled her panty and inserted his penis into her vagina, when this was happening the complainant was crying, refer to question

and answer numbers 47 to 65. For the third count, the Accused also admitted from question and answers 66 to 82. (**Caution interview of Paula Masilevu is attached and annexed as “C”**).

6. The maximum penalty for rape is life imprisonment. The sentencing tariff for rape of a child is well settled.
7. In **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018) the Supreme Court endorsed the following tariff for rape of a child in paragraphs 24 and 25 of the judgment:

[24] The increasing prevalence of these crimes, crimes characterized by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

*[25] The tariff previously set in **Raj v The State** [\[2014\] FJSC 12](#) CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms. (per Gates CJ)*

8. Denunciation is the primary purpose of the crime of rape of a child. As Madigan J observed in **State v Tauvoli** [2011] FJHC 216; HAC027.2011 (18 April 2011):

[5] Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for

such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.

9. The accused is now 42 years old. He is not married but was in a defacto relationship at the time of the offending. He earned a living through farming and supported his elderly parents. He had good character before the offending in this case. His previous good character is a mitigating factor but his personal or family circumstances are not. I give a discount of 1 year for previous good character.
10. The accused's guilty pleas are not early pleas. However, he did plead guilty before the case was fixed for trial. He has saved court's time and resources and relieved the victim the trauma of giving evidence by pleading to the charges. For these factors I give a discount of 2 years in sentence.
11. There are numerous aggravating factors. The accused was the victim's uncle. He breached the family trust bestowed on him by sexually violating the child victim. The age gap between the accused and the victim was vast. Being a female she was vulnerable. Rape was repeated on two separate occasions within a span of five months in 2021. The victim was exposed to pregnancy and sexually transmitted diseases when the accused had unprotected sexual intercourse with her. The victim experienced physical pain during sexual intercourse as she was only 11 years old. On one occasion her mouth was gagged with a cloth to prevent her from raising alarm.
12. For the two counts of rape, I pick an aggregate term of 12 years imprisonment as a starting point and add 6 years to reflect the aggravating factors and deduct 3 years to reflect the mitigating factors.
13. The accused is convicted and sentenced to an aggregate sentence of 15 years imprisonment for two counts of rape of an 11-year old child.

14. The next question is whether to make this sentence concurrent or consecutive to his pre-existing sentence of 9 years. The accused has already served 7 months of that sentence and 11 months of remand period - a total of 18 months (sentence already served). I have considered the totality principle and have decided that the accused should serve 13 ½ years' imprisonment concurrently with a non-parole period of 10 years effective from the date this new sentence.



A handwritten signature in black ink, appearing to read "D. Goundar", is written over a horizontal dotted line.

Hon. Mr. Justice Daniel Goundar

Solicitors:

Office of the Director of the Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused