

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 82 OF 2020

STATE

.vs.

VILIKESA QATIVI

Counsels: *Ms L. Latu.* - *for Prosecution*
 Ms. R. Raj - *for Accused*

Date of Sentence: 16th January 2023

SENTENCE

(The names of the victims are suppressed, as requested by the Prosecution, and will be referred to as SR and VT)

1. The accused in this matter, **Mr. Vilikesa Qaviti**, was charged with three counts of **Rape** against two victims, as below:

Count 1

Rape: Contrary to Sections 207(1) and (2) (b) and (3) of the Crime Act 2009.

Particulars of Offence

Vilikesa Qativi, between the 20th day of April 2019 and 5th day of May 2019, at Naterumai, Naitasiri, in the Eastern Division, penetrated the vagina of **SR** a child under the age of 13 years, with his finger.

Count 2

Rape: Contrary to **Sections 207(1) and (2) (a)** of the **Crime Act 2009**.

Particulars of Offence

Vilikesa Qativi, between the 1st day of December 2019 and the 24th day of December 2019, at Newtown, Nasinu, in the Central Division, had carnal knowledge of **VT** without her consent.

Count 3

Rape: Contrary to **Sections 207(1) and (2) (a)** of the **Crime Act 2009**.

Particulars of Offence

Vilikesa Qativi, between the 10th day of September 2020 at Dreketi, in the Northern Division, had carnal knowledge of **VT** without her consent.

3. Upon reading of the charges in Court on 17th November 2021, **Mr. Vilikesa Qaviti** understood and pleaded not guilty to the charges filed against him. At the trial, the Prosecution led the evidence of 5 witnesses, including the evidence of two victims. At the end of the Prosecution case, since the Court was convinced of the availability of a prima facie case for the Prosecution, acting under **Section 231** of the **Criminal Procedure Act of 2009**, Defense was called from the Accused and all the available options were explained to the Accused.
4. At this juncture, the Accused gave evidence for the Defense under cross-examination and led the evidence of 4 other witnesses. At the end of the Defense case, the Court heard oral submissions from Counsel representing the Prosecution and the Defense. Considering the overall evidence led at the trial, this Court convicted you for **Sexual Assault** contrary to **Section 210(1) (a)** of the **Crimes Act of 2009** and further convicted you for Count 2 and Count 3, as charged at this trial under **Sections 207(1) and (2) (a)** of the **Crime Act 2009**.

This matter is coming up today for sentencing, where the Prosecution and Defense have filed their submissions in aggravation and mitigation.

5. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of **Sexual Assault** under **Section 210** of the **Crimes Act of 2009** is imprisonment for a term of 10 years and the maximum punishment for **Rape** under **Section 207 (1) and (2) (a)** of the **Crimes Act 2009** is Life Imprisonment.
6. The accepted tariffs for the offences you have committed depend on the nature and circumstances under which Rape and Sexual Assault were committed, and the consequences entailing the commission of the offences to the victims and their family at large.
7. I also recognize that to address the rapid increase of sexual offences in our community that shatters the fundamental values of our inclusive community, any punishment imposed by Court for these offences should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers in our society.
8. As per the existing law in Fiji, the sentencing tariff for Rape of a child ranges from 11 to 20 years' imprisonment as held in the case of *Aitcheson v State* [\[2018\] FJSC 29; CAV0012.2018 \(2 November 2018\)](#). The sentencing tariff for Sexual Assault ranges from 2 years to 8 year's imprisonment, as pronounced in the case of *State v Laca* [\[2012\] FJHC 252.2011 \(14 November 2012\)](#).
9. In assessing the objective seriousness of your offending in this matter, I considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offences and the harm caused to the victims. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**.
10. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and**

Penalties Act 2009 in view that you were convicted on series of offences of the same or of similar character for Count 1, 2 & 3. Having considered all these factors, this Court would pick a starting point of 12 years imprisonment against you from the lower range of tariff for the offence of Rape as the first step in the sentencing process.

11. In aggravation of the offences committed by you, Prosecution highlights that there was a significant breach of trust by you in the commission of these offences. You had committed these sexual offences on girls of tender age who were your stepsisters, displaying unsuspected utmost trust and respect to you as their older brother. In this regard, this Courts has a duty to discourage and deter this kind of behavior that belittles the much valued family fabric of our society. Therefore, considering this factor, I increase your sentence by one more year.
12. Prosecution also brings to the attention of this Court the disparity of age between yourself and the victims in this matter and the gravity of the victim impact statements provided by the victims. In this regard, it is stated in the statement of VT the agony and disappointment she went through due to your conduct. Considering the relevance and the impact demonstrated in these statements, I increase your sentence by one more year.
13. In aggravation, Prosecution further emphasizes your *modus operandi* in the commission of the offences charged, where you had pre-planned the most opportunistic time for these offences. In this regard, you have committed these offences in the middle of the night, where all the other family members were sleeping to take the opportunity to approach the victims. I see that on some occasions you had left the house earlier in the night and return to the house late and committed the crime, leaving minimum room for suspicion and attention of other family members. Considering this calculated pre-planning, I increase your sentence by 6 more months.
14. In mitigation, your counsel brings to the attention of this Court **Section 4 (2) (i)** of the **Sentencing and Penalties Act of 2009**, emphasizing that before the commission of the offences charged in this information you maintained a good character and you're a fist offender. In this regard, considering the fact that you had maintained a good character before the commission of offences under this trial, I reduce your sentence by 6 months.

15. It is also informed by your counsel that you have been in custody for this matter for 5 months, both after conviction and after initial arrest. This period should be reduced from the period of your sentence.
16. **Mr. VILIKESA QATIVI**, in considering all the factors analyzed above, **I** sentence you to 13 years and 07 months imprisonment with a non-parole period of 13 years imposed under **Section 18 (1) of the Sentencing and Penalties Act of 2009.**
17. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage