

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

CRIMINAL CASE NO. HAC 103 OF 2022

BETWEEN : STATE

AND : APENISA DRUVA

Counsel : Ms A Vavadakua for the State
Ms L Ratidara for the Accused

Date of Hearing : 20 February 2023

Date of Judgment : 4 April 2023

Date of Sentence : 6 April 2023

SENTENCE

- [1] Following a trial, the offender was convicted of three counts of rape and one representative count of sexual assault. All incidents took place at Nukui village, Rewa over a period of two years between 27 April 2019 and 24 April 2021.
- [2] At the time of the first incident on 27 April 2019, the victim was 12 years old and the offender was 17 years old. They are cousins and lived in the same village. The victim was playing outside when the offender took her to one of the houses in the village and raped her.
- [3] The second incident occurred on 10 October 2020. The victim was 13 years old and the offender was 18 years old at the time. He lured her to his home in the pretext of giving her drinks and raped her.
- [4] The third incident occurred on 24 April 2021. The offender entered the victim's home at nighttime as an intruder and then raped her. She was impregnated and

gave birth to a child when she was 14 years old. She had to abandon school at Year 8. She was removed from her home and kept under the State's care. Her parents decided to give the child for adoption but when the adoption did not work out they decided to keep the child. The victim was reunited with her parents after she gave birth.

- [5] The offender is now 20 years old. He resides at Nukui village with his parents and his siblings. He is the youngest of five siblings. He is educated up to Form 4. He may have not realized the gravity of his crime and the harm he has caused to the victim because of his youth. I consider his youth and previous good character as mitigating factors.
- [6] The aggravating factors are that rape was repeated over a period of two years. The victim was vulnerable due to her tender age and gender. On the second occasion the offender used deception to lure her to his home. On the third occasion she was raped in the privacy of her home. She was impregnated and gave birth to a child at the age of 14 years. She was removed from her home and placed under the State's care. She discontinued her studies due to her pregnancy and her trust was grossly breached by the offender who was her cousin.
- [7] I take into account that the maximum sentence for rape is life imprisonment. The maximum sentence indicates the seriousness of the offence.
- [8] Rape of a child is an abhorrent crime that the courts have a duty to denounce in the strongest terms. The main purpose of sentence is general deterrence. The reason being that sexual abuse of children causes considerable physical and mental trauma to them (Fisher v State [2018] FJCA 207; AAU0132.2014 (29 November 2018)). In cases of rape of children, the Supreme Court has widened the tariff between 11-20 years imprisonment (Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)).
- [9] The maximum sentence for sexual assault is 10 years imprisonment and the tariff is between 2-8 years imprisonment (State v Ratabacaca HAC 252 of 2011). In this

case, the offender sexually assaulted the victim at the time he raped her inside her home on 24 April 2021.

[10] Section 30(1) of the Juveniles Act prohibits imprisonment of juvenile offenders for more than 2 years. Because of this legal prohibition, the offender is sentenced to 2 years imprisonment on count 1 to reflect his juvenile status at the time of the offending.

[11] I consider an aggregate sentence for counts 2 and 3. I pick 12 years as a starting point, add 6 years to reflect the aggravating factors and deduct 4 years to reflect the mitigating factors and remand period of about 2 months.

[12] The offender is sentenced as follows:

Count 1: rape - 2 years imprisonment (Juvenile).

Counts 2-3: rape- aggregate sentence of 14 years imprisonment.

Count 4 – sexual assault - 4 years imprisonment.

[13] All terms are to be served concurrently. The total effective sentence is 14 years imprisonment with a non-parole period of 10 years.

[14] The DVRO with standard non-molestation condition is made permanent.



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 Public Prosecutions for the State

Legal Aid Commission for the Accused