

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO : HAC 173 OF 2020**

**STATE**

**v**

**SEMISI RAVUSOU**

Counsel :                    Mr. J. Nasa for Prosecution  
                                      Ms. L Volau for Defence

Date of Judgment:            11 May 2023

Date of Sentence              17 May 2023

(The name of the victim is suppressed. She is referred to as KK)

**SENTENCE**

1. Mr. Semisi Ravusou, you stand convicted of one count of Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009 and one count of Sexual Assault contrary to Section 210 (1)(a) of the Crimes Act 2009. The information that was read over to you is as follows:

**COUNT ONE**

**Statement of Offence**

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

Particulars of Offence

SEMISI RAVUSOU on an unknown date between the 1st day of November 2019 and the 30th day of November, 2019, at Nadi in the Western Division, penetrated the vagina of KK, a child under the age of 13 years, with his tongue.

COUNT TWO

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SEMISI RAVUSOU on an unknown date between the 1st day of November 2019 and the 30th day of November 2019, at Nadi in the Western Division, unlawfully and indecently assaulted KK, a child under the age of 13 years, by touching the surface of her vaginal region, on top of her clothes.

2. Having understood the charges and the legal consequences of a guilty plea, you pleaded guilty to each count in the presence of your counsel. You confirmed that no one pressurised or influenced you to plead guilty. I am satisfied that the pleas are voluntary and entered on your own free will.
3. When the summary of facts was read over to you, you understood the same and confirmed your acceptance and agreement with the same. The facts you admitted are that:

The complainant is KK. She was 12 years of age at the time of the incidences. The accused is Semisi Ravusou (hereinafter referred to as “the accused”). He was 67 years of age at the time of his offending. The accused and the complainant are related. The accused is the grand-uncle of the complainant. In the month of November 2019, the complainant lived with the accused and her family at Nabila, Nadi.

First Count

On an occasion in November 2019, the complainant was sleeping in the living room at their home at Nabila, Nadi, at around mid-day. While she was sleeping, MW, who is the younger sister of the complainant was playing outside. The complainant’s parents were away at work.

On the said occasion, the accused closed all the windows and doors of the house and proceeded to take off the complainant’s panty whilst she was asleep. Thereafter, the accused then licked the vagina of the complainant with his tongue. Subsequently, MW, opened the door to the house from the outside and she saw what the accused was doing to the complainant. The accused advised MW to not inform her parents of what had taken place.

Second Count

On a separate occasion in November 2019, the complainant was playing at a sand bank in a nearby river at Nabila, Nadi. The accused was also swimming in the river at the relevant time. Whilst the complainant was playing at the said sand bank, the accused drew near towards her and touched the surface of her vaginal region on top of her clothes, with his hand. The complainant did not like what the accused did to her.

The matter was reported to police and the accused was apprehended, interviewed and charged at Namaka Police Station, Nadi.

4. To satisfy myself if all the elements of each offence has been established, I carefully considered the facts you admitted.
5. The Prosecution in the information alleges that you ‘penetrated the vagina’ of the complainant - KK with your tongue. You admit that you ‘licked the vagina’ of the complainant. In the information you are charged under Section 207(1) and 2(b) of the Crimes Act 2009. According to this section, a person rapes another person if the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person’s body that is not a penis without the other person’s consent.
6. The consent of the complainant is totally irrelevant in this case because she was under the age of 13 years at the time of the offence [Section 207(3)]. According to the particulars of the information, the part of the body that is alleged to have penetrated complainant’s vagina is your tongue. The question is whether on the facts admitted, I should accept a plea of guilty to the charge as laid.
7. To record a conviction for rape as charged, I must be satisfied that you penetrated the vagina of the victim with your tongue to any extent. That means, a slightest penetration is sufficient [Randall v R. (1991) 55 SASR 447]. In my deliberation, I would ask myself these questions; Is the act of licking (with the tongue) capable of establishing vaginal penetration? Does the conduct of licking of vagina constitute rape in terms of Section 207(1) and (2) (b) of the Crimes Act 2009? I must answer these questions before a conviction for Rape could be recorded.
8. Considering the recent judgments pronounced by the Court of Appeal [Volau v State [2017] FJCA 51; AAU0011.2013 (26 May 2017)] and by the High Court, [State v Victor Harry (3 May 2023) Crim. Case No: HAC 206 of 2021], I am compelled to scrutinize whether the

admitted conduct on your part established the element of penetration (of vagina), an essential element of Rape as charged.

9. What vagina means in medical literature was explained by the Court of Appeal in the case of *Volau v State* (supra) as follows;

It is well documented in medical literature that first, one will see the vulva i.e. all the external organs one can see outside a female's body. The vulva includes the mons pubis ('pubic mound' i.e. a rounded fleshy protuberance situated over the pubic bones that becomes covered with hair during puberty), labia majora (outer lips), labia minora (inner lips), clitoris, and the external openings of the urethra and vagina. People often confuse the vulva with the vagina. The vagina, also known as the birth canal, is inside the body. Only the opening of the vagina (vaginal introitus i.e. the opening that leads to the vaginal canal) can be seen from outside. The hymen is a membrane that surrounds or partially covers the external vaginal opening. It forms part of the vulva, or external genitalia, and is similar in structure to the vagina.

10. With reference to the paragraph mentioned above, *Kulatunga J* in *State v Victor Harry* (supra) observed as follows:

According to the said description the female genitalia at the outer most is the mons pubis which in general usage is also sometimes referred to as the private part. From the labia majora to the vaginal orifice it is referred to as the vulva. Then the vagina.

11. In that case (*Harry*), the complainant had said that she felt pain in her vagina and also said that the accused inserted the two fingers into her vagina. Then she had also said that the poking of the fingers was over the panty. In that context, *Kulatunga J* thought that, in the normal course, it is not possible to have pushed the two fingers into the vagina with the panty. His Lordship acquitted the accused of Rape and convicted him for the lesser offence of Sexual Assault. His Lordship further observed:

However, when *MW* (complainant) used the term vagina it was certainly not a reference to the medical concept of being beyond the vaginal orifice. In the common usage the word vagina is used to describe the inner female private part in general and it is not a specific reference to a particular area of the female organ. When *MW* said that he 'poked' her vagina, it meant no more than an intrusion to her sexual organ.

12. It is clear that the word "vagina" has become an all-encompassing term used to refer to the general area "down there" when in fact, the vagina is, in the medical terminology, a complex part of women's internal genital anatomy. Often when people use the word "vagina," they're

actually referring to the vulva. The vulva consists of all of external female sex organs including the *mons pubis* (pubic hair area), *labia majora* (outer lips), *labia minora* (inner lips), and the clitoris. These organs play a key part in sexual arousal.

13. According to Oxford Dictionary and Longman Dictionary, 'lick' is to move ones tongue over the surface of something to eat it, make it wet, clean etc. The question then is, when a person admits that he licked the vagina of the victim with his tongue, whether this conduct could amount to penetration of the vagina. If I were to import the thinking of Kulatunga J, it is hardly possible for the tongue to reach as deep as vagina which is inside the body as it is described in medical parlance. In that context, I must have a reasonable doubt if the act of licking (by tongue) could amount to penetration of the vagina.
14. However, the question does not end there. What is criminalised as rape in Fiji is not only a penetration of vagina, but also to any extent of vulva, anus or mouth [Section. 207(1) and (2) (b)] The rational thinking of the Legislature appears to be is to punish as rape any penetration that possibly can happen in terms of invasion of the body or person. That is how the notion of rape has been developed over the years in many jurisdictions.
15. In some jurisdictions, for example, the Northern Territory of Australia, cunnilingus is included in the definition of sexual intercourse (s1 of the Criminal Code). It is an offence contrary to s 192(3) of the Criminal Code to have sexual intercourse which includes cunnilingus without consent.
16. According to Collins English Dictionary, 3rd edn, the definition cunnilingus is "a sexual activity in which the female genitalia are stimulated by the partner's lips and tongue". The Concise Oxford Dictionary defines it as "stimulation of vulva or clitoris by licking". The Macquarie Dictionary, 3rd edn, defines it to mean "oral stimulation of the female genitals". The Shorter Oxford English Dictionary definition is "oral stimulation of the vulva or clitoris".
17. In *Randall v R* (1991) 55 SASR 447, Cox J, with whom King CJ agreed, said at pg 452:

In my opinion, it denotes the licking or sucking of the vagina or vulva, including the labia majora, with the tongue or mouth. No distinction is to be drawn between the outer and inner aspects of the labia.

18. In *Jordan v The Queen* (1996) 136 FLR 109 at 113 the Court of Criminal Appeal said: “Cunnilingus is defined in Vol IV at 129 as “oral stimulation of the vulva or clitoris”, the external female genitalia.”
19. In DPP Ref (No 1 of 1992) (1993) 65 A Crim R 197 at 203, Malcolm CJ and Walsh J said:
- Both cunnilingus and fellatio in their ordinary meaning are mutual activities in which one person engages with another or performs on another. According to the Oxford English Dictionary (2nd edn), Vol IV at p 129 cunnilingus is the licking of the vulva or clitoris. The term is derived from the Latin *cunus* (vulva) and *lingua* (tongue). The Latin verb *linguere* means “to lick”. According to Schmidt, *Attorneys Dictionary of Medicine*, Vol I at p C-152, cunnilingus is: “The practice of licking, kissing, sucking or otherwise fondling the vulva (the sex organs of the female) with the mouth usually by a male but also by a female homosexual.” The term “cunnilinctio” is a synonym for cunnilingus. The former means simply “licking of the vulva” according to *Butterworth’s Medical Dictionary* (2nd edn) at p 441. In our opinion, cunnilingus as defined in the dictionaries, does not involve penetration of the vagina. It is an act of stimulation. In this respect we agree with what was said by Cox J in *Randall* (19991) 55 SASR 447 at 449-452; 53 A Crim R 380 at 381-384.”
20. The *Macquarie Dictionary*, 3rd edn, defines “vulva” to mean “the external female genitalia, specifically, the two pairs of labia and the cleft between them”. According to *Mosby’s Dictionary of Medicine, Nursing and Health Professions* at p 1820, the vulva is defined as “the external genitalia of the female. It includes the *labia majora*, *labia minora*, *mons pubis*, clitoris, and vestibule of the vagina, greater and lesser vestibule glands, and the vaginal orifice”. *Lewis’s Medical-Surgical Nursing*, Brown & Edwards, defines the external genitalia at p 1344: “The external portion of the female reproductive system, commonly called the vulva, consists of the *mons pubis*, *labia majora*, *labia minora*, clitoris, urethral meatus, ducts of Skene’s glands, vaginal introitus (opening) and Bartholin’s glands.”
21. Accordingly, I come to the conclusion that the licking or oral stimulation of the vulva or the parts of the female external genitalia including the *mons pubis* (Cunnilingus) amounts to penetration in terms of Section 207(1) and (2) (b) of the Crimes Act. This finding I suppose is in conformity with the intention of the Legislature I have already adverted to. Otherwise a heavy burden shall have been imposed on the Prosecution to prove a charge of Rape, perhaps without medical evidence, it will be next to impossible in a case where the complainant is unsure as to which part exactly of her genitalia that was actually penetrated. Harry (*supra*) is one of them confronted by Kulatunga J.

22. With this conclusion having been reached, the next issue that must be addressed is whether a person charged with rape on the particulars that he has penetrated the vagina with his tongue could lawfully be convicted for Rape when the Court finds on the facts admitted or proved that he has licked the vulva or the parts of the female external genitalia that I described above.
23. Both the acts, whether it is penetration of vagina with the tongue or penetration of vulva with the tongue, are criminalized under the same section namely Section 207(1) and (2) (b) of the Crimes Act. In the information, this section is clearly mentioned as the statement of the offence. Therefore, I do not see any embarrassment or prejudice shall have been caused to you only because the particulars of the charge do not specify that you have penetrated the vulva with your tongue.
24. I am satisfied that the elements of Rape as charged in the information is established on the facts you have admitted. Therefore, I find you guilty of Rape and convict you accordingly. I am also satisfied that the act of touching the surface of victim's vaginal region on top of her clothes, with hand amounts to Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act 2009. Therefore, I find you guilty on count 2 and convict you accordingly.
25. The maximum sentence for Rape is life imprisonment. The sentencing tariff for juvenile rape ranges from 11 years to 20 years' imprisonment. [Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
26. The maximum penalty prescribed for the offence of Sexual Assault is 10 years' imprisonment. The sentencing tariff ranges from 2 to 8 years' imprisonment, the top end being reserved for serious sexual assaults [State v Epeli Ratabacaca Laca, HAC 252 of 2011]. In *Laca*, depending on gravity, three (3) categories of sexual assaults were identified:

Category 1

Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

### Category 3

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

27. The act of touching the surface of victim's vaginal region on top of her clothes, with hand falls into category 3 above.
28. In selecting a sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to the maximum penalty prescribed for the offences, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victim, I would select the appropriate starting point. The final sentence would be determined after making due adjustments for the aggravating and the mitigating circumstances.
29. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the children who are vulnerable members of our society. The children are entitled to live their lives free from any form of physical or emotional abuse.
30. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive condign punishment to mark the society's outrage and denunciation against sexual abuse of children. The main



purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that, if anyone yield to these crimes will meet with severe punishments.

31. The offending forms a series of offences of a similar character. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has a discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for both offences.
32. Having taken into consideration the seriousness of the offences and the harm caused to the victim, I select a starting point of 11 years for both offences from the bottom range of the tariff for Rape.
33. I have identified the following aggravating and mitigation factors with the help of the submissions filed by the Counsel and the Victim Impact Statement:

Aggravating factors:

- (a). The offending took place in a domestic setting. The victim trusted you as her grand uncle. When she deserved your affection, care and protection, you have committed these offences in gross breach of trust.
- (b). There is a huge age gap between you and the victim. You were 67 years old at the time of the offending when your victim was only 12 years old.
- (c). The victim was extremely vulnerable because of her age and also of ostensible authority you exercised over her as an adult relative. You exploited the vulnerability of a child in an opportunistic way when her parents were away.
- (d). The trauma caused to the child victim scarred rest of her life. The psychological impact on the victim is enormous and your offence made her life miserable.
- (e). You attempted to silence the victim's younger sister not to inform her parents of what had taken place.

Mitigating Factors:

- (a). You are a farmer and a widower, 71 years of age. You have no children but were looking after two children. The personal circumstances are of little mitigatory value.
- (b). You do not have any previous convictions. You have maintained a clean record over the past 71 years of your life.
- (c). You admitted your fault and confessed to the police in the caution interview. You pleaded guilty when the amended information was filed. You have been extremely remorseful. You have spared the little girl from reliving her ordeal in Court. Furthermore by pleading guilty, you have saved precious time and resources of this Court.
- (d). You have been cooperative with the police.
34. I add 3 years and 7 months to the starting point of 11 years for the above mentioned list of aggravating factors to arrive at an interim sentence of 14 years and 7 months' imprisonment. I reduce 2 year for mitigating factors to arrive at a sentence of 12 years and 7 months' imprisonment.
35. You had been in remand for approximately 2 years and 7 months. I consider your remand period as part of your sentence already served and deduct 2 years and 7 months to arrive at a final aggregate sentence of 10 years' imprisonment.
36. Taking into consideration your age, health condition, potential for rehabilitation, the gravity and the impact of the offence on the society, I impose a non-parole period of 08 years.
37. Summary  
Mr. Semisi Ravusou, you are sentenced to an imprisonment term of 10 years with a non-parole period of 08 years.
38. You have 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Aruna Anthge".

Aruna Anthge  
Judge

17 May 2023

At Lautoka

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence