

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 26/2023

STATE

vs.

KAVAIA BAI ROKOSUKA

Counsels:

Mr. Zunaïd Z	-	for State
Mr. Prasad	-	for Accused

SENTENCE

1. In this matter the Accused, **KAVAIA BAI ROKOSUKA**, had been charged with two counts of Rape and two counts of Sexual Assault, as below:

COUNT 1

Statement of Offence

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

Particulars of Offence

KAVAIA BAI ROKOSUKA on the 21st day of November 2022 at Vanuadina, in Tailevu, in the Eastern Division, had carnal knowledge of ILISEVA VALAMALUA ROKOSUKA without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

KAVAIA BAI ROKOSUKA on the on the same occasion as in Count 1, unlawfully and indecently ILISEVA VALAMALUA ROKOSUKA by fondling her breasts.

COUNT 3

Statement of Offence

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

Particulars of Offence

KAVAIA BAI ROKOSUKA on the on the same occasion as in Count 1 and 2, unlawfully and indecently assaulted ILISEVA VALAMALUA ROKOSUKA by rubbing his hands on her genitalia.

COUNT 4

Statement of Offence

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

Particulars of Offence

KAVAIA BAI ROKOSUKA on the 21st day of November 2022 at Vanuadina, in Tailevu, in the Eastern Division, had carnal knowledge of ILISEVA VALAMALUA ROKOSUKA without her consent.

2. You pleaded guilty on your own free will to the above mentioned counts represented by counsel in Court on 08/03/2023. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. You agreed to the following summary of facts, when they were read to you in Court on 15/03/2023.

SUMMARY OF FACTS

- *The person charged in this case is Kavaia Bai Rokosuka, (hereinafter referred to as "Kavaia".) He was 44 years old in 2022. He is married with 4 children. One of his children*

is the complainant in this case, her name is Iliseva Valamalua Rokosuka (hereinafter referred to as "the victim").

- *On the 21st of November 2022, a Monday, the victim was at home with her father whilst her mother had gone out to Laqere Market as she is a Market vendor. Kavaia then told his daughter the victim that she should accompany him to the farm to get some food.*

Count 2

- *Kavaia then took the lead to the farm. When they reached the farm, the victim was holding a sack. Kavaia then told his daughter, the victim, to spread the sack on the ground. She asked him why she should do that but Kavaia then became violent and pushed her onto the ground. He held her down on the ground whilst fondling her breasts under her bra.*

Count 3

- *Kavaia then whilst forcefully holding his daughter on the ground and forcefully fondling her breasts also managed to then push her panty down and began to rub his hands on her genitalia, without her consent.*

Count 1

- *Kavaia then moved his body over his daughter's body (the victim) at which point she was struggling and pushed her father away but was not successful because he was bigger than her. Kavaia then without this victim's consent, forcefully pushed his penis into her vagina, without her consent. She continued struggling and then finally managed to kick him and she ran home. As she fled home, Kavaia kept calling her. She remained inside her room.*

Count 4

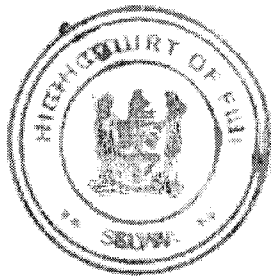
- *Then on the 26th November 2022, at about 4 pm, Kavaia was alone at home again with the victim. She obeyed her father, Kavaia. She went with him to the farm. When they reached the farm, Kavaia again forced her on to the ground. She tried to get away from him but could not as he was bigger and stronger than her. Kavaia managed to overpower her and pushed her onto the ground. He then forcefully pulled off her pant from underneath her skirt. He then whilst still forcing her on the ground, got on top of his own daughter, the victim, raped her by forcing his penis into her vagina without her consent. She stated that before they left the farm that afternoon, Kavaia told her to get some food from the farm as their dinner.*

- *The victim was born on 5th July 2006.*
4. At the very outset, this Court was convinced that the summary of facts agreed by you satisfy all the elements of each offence you are charged with. Therefore, this Court convicted you for the offences charged with by the information in this matter. On considering the submission made by the Prosecution in aggravation and your counsel in mitigation, now this matter is pending for sentencing.
 5. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of **Rape** under **Section 207 (1) and 2** of the **Crimes Act of 2009** is an imprisonment for life and the maximum punishment for **Sexual Assault** under **Section 210 (1) (a)** of the **Crimes Act 2009** is an imprisonment for a term of 10 years.
 6. The accepted tariff for counts 1, 2, 3 and 4 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 the family concerned.
 7. I also recognize that to address the rapid increase of sexual offences committed in the own family background that shatters the fundamental values of our inclusive society, 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 an adult ranges from 7 years to 15 years' imprisonment as held by the **Supreme Court of Fiji** in the case of ***Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26th April 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 pleaded guilty and were convicted on series of offences of the same or of similar character for Count 1, 2, 3 & 4. Having considered all these factors, this Court would pick a starting point of 12 years imprisonment against you from the higher 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, the Prosecution highlights that there was the utmost breach of trust that one can imagine in any human civilization ever existed in the commission of these offences by you, where you had raped your own daughter, demonstrating that you had allowed your carnal desires to overcome your own blood and skin. For this end, your daughter had paramount trust and respect to you as her father and gullibly obeyed your directions. 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 two (2) more years.
12. 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 requested your daughter to come with you to the farm when your wife was not at home. Further, in the victim impact statement **ILISEVA** has informed the psychological trauma she has gone through after the commission of these offences by you. Considering this calculated pre-planning and psychological harm caused to the victim, I increase your sentence by one (1) more year.
13. In mitigation, your counsel has pleaded for a lesser sentence in performing her professional duty. Nevertheless, in considering your connection to the victim in this matter, I am not willing to exercise any leniency other than what is strictly provided by the law. However, your counsel further informs court that you have entered an early guilty plea and that you regret your action in question. You have also been supportive to the police during investigations after your arrest. Further, by pleading guilty to the charge you have saved Courts time and resources at a very early stage of the Court

proceedings. For all these grounds in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence.

14. Still further, state counsel brings to my attention that since your arrest on 22nd December 2022 you have been in custody for 5 months, which period must be reduced from the final sentence.
15. **KAVAIA BAI ROKOSUKA**, in considering all the factors analyzed above, I sentence you to 09 years and 07 months imprisonment with a non-parole period of 09 years imposed under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009**.
16. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage".

.....
Hon. Justice Dr. Thushara Kumarage

At Suva
This 2nd day of June 2023

cc: *Office of Director of Public Prosecutions*
Office of Legal Aid Commission