

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 46 OF 2022

STATE

vs.

TEVITA SUKABULA

Counsels:

Ms. Mishra P.	-	for State
Mr. Ravu S.	-	for Accused

SENTENCE

1. In this matter the Accused, **TEVITA SUKABULA**, had been charged with four counts, as below:

FIRST COUNT

Statement of Offence

INDECENTLY INSULTING OR ANNOYING ANY PERSON: Contrary to Section 213(1) (a) and 310(a) (i) of the Crimes Act 2009.

Particulars of Offence

TEVITA SUKABULA on the 30th day of July, 2021 at Cunningham, in the Central Division, with intent to insult the modesty of **PAULIN LEDUA BIUDOLE KOTOBALAVU**, uttered the words to the effect that **PAULIN LEDUA BIUDOLE KOTOBALAVU** should shave her vaginal area intending that such words be heard by **PAULIN LEDUA BIUDOLE KOTOBALAVU**.

SECOND COUNT
(Representative Count)

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210(b) (ii) of the Crimes Act 2009.

Particulars of Offence

TEVITA SUKABULA on the 30th day of July, 2021 and 11th day of October 2021 at Cunningham, in the Central Division, procured **PAULIN LEDUA BIUDOLE KOTOBALAVU** to witness an act of gross indecency by exposing his penis to her.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

TEVITA SUKABULA between the 1st day of October 2021 and the 31st day of October 2021 at Cunningham, in the Central Division, penetrated the vagina of **PAULIN LEDUCA BIUDOLE KOTOBALAVU** with his penis without her consent.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

TEVITA SUKABULA on the 7th day of December 2021 at Cunningham, in the Central Division, penetrated the vagina of **PAULIN LEDUCA BIUDOLE KOTOBALAVU** with his penis without her consent.

2. When the above counts were read in Court, you pleaded guilty on your own free will to the above mentioned counts represented by counsel on 24/02/2023. 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 10/05/2023.

SUMMARY OF FACTS

Accused

The accused in this matter is one Tevita Sukabula, who was 49 years old at the time of the offending, of Biau Drive, Cunningham Stage 2, (hereinafter referred to as the “accused”).

Complainant (PW1)

The complainant in this matter is one Paulin Ledua Biudole Kotobalavu, who was 14 years old at the time of offending, of Biau Drive, Cunningham Stage 2, (hereinafter referred to as the “victim”).

Facts

The victim and the accused are related in this matter. The accused is the victim’s maternal grandfather (maternal grandmother’s brother). The victim and the accused were residing together at Biau Drive at Cunningham Stage 2 at the time of the incident.

Count 1

- On the 30th of July, 2021, the 14 year old victim was at home and so was the accused at Biau Drive, Cunningham Stage 2. The victim was in her room when the accused being the victim’s grandfather, approached her, with the intent to insult her modesty, indecently told the victim to go to the bathroom and shave her vagina. The words being uttered by the accused, who was an elder of the house and related to the victim as a grandfather were indecent.

Count 2 - Representative Count

- The accused in this matter between the period of 30th July, 2021 and 31st October, 2021, while the victim was at home caused the victim to witness an act of gross indecency when he exposed his naked penis to the victim, without her consent.
- During one of the occasions, between this period of 30th July, 2021 and 31st October, 2021 the accused caused the victim to witness him in an act of gross indecency when he held his naked penis and massaged it slowly looking at the victim without her consent.
- On another occasion between the period 30th July 2021 and 31st October 2021 whilst the victim was in the sitting room, the accused stood near the bedroom door, pulled the overlap of his sulu and caused the victim to witness an act of gross indecency, his exposed naked penis, without her consent.

Count 3

- The accused, between the period of 1st day of October 2021 and the 31st of October 2021 at Biau Drive Cunningham Stage 2, on one of the nights between the said periods, the victim went to sleep after watching the television.

- Whilst the victim was in her room on her bed, the accused came into her room wearing a towel. The accused then forcefully parted the victim's legs and forced his penis into the victim's vagina and continued to push it inside the victim's vagina forcefully.
- The accused knew that the victim was not consenting to the sexual intercourse with him however, he continued to have sexual intercourse with her, without her consent.

Count 4

- On the 7th day of December 2021, at night whilst the victim was in her bed, asleep, the accused again sexually abused her.
- The victim was sleeping with a 4 year old child namely Gloria. The victim woke up and felt pain in her stomach. The victim felt that something was being forced inside her vagina and up into her stomach. As the victim tried to free herself she was punched on the right cheek.
- The accused then covered the victim's mouth and threatened her to stay quiet. The victim recognized the voice as her grandfather, the accused.
- The victim tried to free herself but the accused was holding onto her tightly and she was unable to move. The accused at the same time forcefully penetrated his penis several times into the victim's vagina in a rough manner.
- The accused then leaned towards the victim in an attempt to kiss her. The victim was then able to clearly see the accused's face from the light that was coming from the kitchen. The victim was then clearly able to see that it was the accused, her grandfather.
- The accused forcefully penetrated his penis into the victim's vagina that night knowing that the victim was not consenting to the sexual intercourse with him.
- When the accused tried to kiss the victim, the victim was able to turn her face to avoid the kiss and the accused's hand slipped from the victim's mouth and she was able to call out to her grandmother for help.
- The accused then quickly stood up and grabbed his towel, wrapped it around his waist and went out. The victim then had her shower and decided to flee from the house.
- After this incident, the victim then went to her aunt's house in Raiwaqa. When she reached her aunt's that early morning, she reported the matter to her aunt. The aunt then took the victim to Raiwaqa Police Station and reported the matter to police.

Investigation

- Upon investigation the police arrested the accused and he was caution interviewed. The accused made partial admission in the Record of Interview.

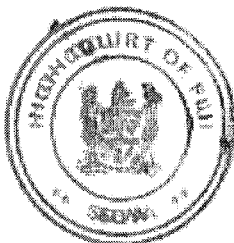
- The accused on the 30th day of July, 2021 at Cunningham in the Central Division, with intent to insult the modesty of the victim, said the words to the effect that the victim should shave her vaginal area, intending that such words be heard by the victim.
 - The accused between the 31st day of July, 2021 and 30th day of October 2021 at Cunningham, in the Central Division, procured the victim to witness an act of gross indecency by exposing his penis to her.
 - The accused between the 1st day of October 2021 and the 31st day of October, 2021 at Cunningham in the Central Division penetrated the vagina of the victim with his penis without her consent.
 - The accused on the 7th day of December 2021 at Cunningham in the Central Division, penetrated the vagina of the victim with his penis without her consent.
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 were 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, where you had raped your granddaughter, who was just 14 years at that point of time. I am mindful that the maximum punishment for the offence of **Rape** under **Section 207 (2) (a)** of the **Crimes Act of 2009** is an imprisonment for life, the maximum punishment for **Sexual Assault** under **Section 210 (b) (ii)** of the **Crimes Act 2009** is an imprisonment for a term of 10 years and the maximum punishment for **Indecently Insulting or Annoying any Person** under **Section 213 (1) (a)** of the **Crimes Act of 2009** is imprisonment for 1 year.
 6. The accepted tariff for counts 1, 2, 3 and 4 depend on the nature and circumstances under which these offences 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 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 & 4. Having considered your relationship and the age difference with the victim, this Court would pick a starting point of 14 years imprisonment against you from the middle range of tariff for the offence of Rape as the first step in the sentencing process. In deciding on the above starting point, I considered the below pronouncement of the **Supreme Court of Fiji** in the case of *Aitcheson v State* [2018] FJSC 29:

“Undoubtedly it has been accepted by the society that rape is the most serious sexual offence that could be committed on a woman. Further, it is said that, “A murdered destroys the physical body of his victim, a rapist degrades the very soul of a helpless female.”

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 a girl of tender age who was granddaughter, who had great trust in you. 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 (01) more year.

12. Prosecution also brings to the attention of this Court the gravity of the victim impact statement provided by the victim. In this regard, your actions have emotionally and psychologically traumatized a young girl who is just venturing in to her young adult life. Considering the relevance and the impact demonstrated in this statement, I increase your sentence by one (01) 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. Further, state counsel brings to my attention that since your arrest on 30th January 2022 you have been in custody for 5 months and 15 days, which period must be reduced from the final sentence.
15. **TEVITA SUKABULA**, in considering all the factors analyzed above, I sentence you to 10 years and 02 months imprisonment with a non-parole period of 9 years and 6 months 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 16th day of June 2023

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