

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 08 of 2019

STATE

V

ROBERT WILLIAM STOMAN

Counsel : Ms. Prenika Lata with Ms. Rukalesi Uce for the State
Mr. Iqbal Khan with Mr. Anil Prasad for the Accused

Dates of Trial : 13 March & 15-17 March 2023

Judgment : 4 May 2023

Sentence Hearing : 26 July 2023

Sentence : 11 August 2023

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "MMD" or simply "M".

SENTENCE

[1] Robert William Stoman, as per the Amended Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

COUNT 1

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, penetrated the vulva of **MMD**, a child under the age of 13 years, with his tongue.

COUNT 2

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, touched the vagina of **MMD**, a child under the age of 13 years, with his fingers.

COUNT 3

Statement of Offence (a)

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, unlawfully and indecently assaulted **MMD** by touching her buttocks.

COUNT 4

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, penetrated the vagina of **MMD**, a child under the age of 13 years, with his finger.

COUNT 5

Statement of Offence (a)

PORNOGRAPHIC ACTIVITIES INVOLVING JUVENILES: Contrary to Section 62A (1) (b) of the Juveniles Act Chapter 56.

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, took photographs and made video recordings of pornographic activities of **MMD**, a juvenile, on his mobile phones.

- [2] You pleaded not guilty to the charges and the matter proceeded to trial. The ensuing trial was held over 4 days. The complainant (MMD), her father Garry Raymond Dunn, her mother Mereani Naioba Dunn, Dr. Tieri Margaret Konrote and Police Officer, Savenaca Siwatibau Waqa, testified on behalf of the prosecution.
- [3] At the end of the prosecution case this Court decided that there was no relevant or admissible evidence to establish that you had committed the offence you are charged with in Count 3. Accordingly, you were found not guilty and acquitted of the said charge.
- [4] However, this Court decided to call for your defence in respect of Counts 1, 2, 4 and 5. You decided to testify on your own behalf. You also called Corporal 5341 Barbara to testify in support of your case.
- [5] At the conclusion of the evidence and having reviewed the totality of the evidence, this Court found you guilty and convicted you of Counts 1, 2, 4 and 5.
- [6] It was proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, you penetrated the vulva of the complainant with your tongue, and at the time the complainant was a child under the age of 13 years.
- [7] It was further proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, you touched the vagina of the complainant with your fingers, and at the time the complainant was a child under the age of 13 years.
- [8] It was also proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, you penetrated the vagina of the complainant with your finger, and at the time the complainant was a child under the age of 13 years.
- [9] And finally it was proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, either in public or in private, directly or indirectly, you took photographs and made video recordings of pornographic activities involving the complainant and at the time the complainant was a juvenile.
- [10] The complainant clearly testified to all the aforesaid incidents. I have referred to the complainant's evidence at length in my judgment.
- [11] It is an admitted fact that the complainant was residing at Lot 57 McElrath Street, Mountain View, Nadi and was 6 years old at the time of the alleged offending. It is also admitted that you were a good friend of the complainant's father Garry Dunn. It is

further admitted that when visiting Fiji since May 2018, you used to stay with the complainant's family.

[12] The complainant's date of birth is 31 August 2012. Thus at the time of the incidents alleged, the complainant was only 6 years old, and a child under the age of 13 years. At the time she testified in Court she was 10 years of age.

[13] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[14] I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

[15] Robert William Stoman, I will first deal with the three counts of Rape that you have been found guilty and convicted (Counts 1, 2 and 4).

[16] The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for life.

[17] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

- [18] In *The State v Lasaro Turagabeci and Others* (unreported) Suva High Court Crim. Case No. HAC0008.1996S; Pain J said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

- [19] In the case of *State v. Marawa* [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

*“A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public’s disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: **Roberts and Roberts** (1982) 4 Cr. App R(S) 8; **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S.”*

- [20] His Lordship Justice Daniel Goundar, in the case of *State v. AV* [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

“...Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences”.

- [21] In the case of *State v. Tauvoli* [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

[22] In the case of **Felix Ram v. The State** [2015] FJSC 26; CAV 12 of 2015 (23 October 2015); His Lordship Chief Justice Anthony Gates laid down the following factors that a Court should take into account when sentencing an offender who has been convicted of Rape:

“(a) whether the crime had been planned, or whether it was incidental or opportunistic;

(b) whether there had been a breach of trust;

(c) whether committed alone;

(d) whether alcohol or drugs had been used to condition the victim;

(e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;

(f) whether the impact on the victim had been severe, traumatic, or continuing;

(g) whether actual violence had been inflicted;

(h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;

(i) whether the method of penetration was dangerous or especially abhorrent;

(j) whether there had been a forced entry to a residence where the victim was present;

(k) whether the incident was sustained over a long period such as several hours;

(l) whether the incident had been especially degrading or humiliating;

(m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;

(n) Time spent in custody on remand;

(o) Extent of remorse and an evaluation of its genuineness;

(p) If other counts or if serving another sentence, totality of appropriate sentence.”

[23] His Lordship Justice Goundar in **State v Apisai Takalaibau** – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that “A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community.”

[24] This has been affirmed by the Supreme Court in **Alfaaz v. State** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held:

“According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders.”

[25] In the case of **Anand Abhay Raj v. The State** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[26] However, in the case of **Aitcheson v State** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*“The tariff previously set in **Raj v The State** [2014] FJSC 12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.”*

[27] In **Aitcheson v State** (*Supra*), it was said:

“[72] 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 murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female."

[28] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."

[29] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, I commence your sentences at 11 years imprisonment for the three counts of Rape.

[30] The aggravating factors are as follows:

- (i) You are very well known to the complainant and her family. You were a good friend of the complainant's father Garry Dunn and he invited you to stay with the complainant's family, whenever you were visiting Fiji. You had been staying at the complainant's residence since May 2018. Thus the complainant trusted you. Being so, you should have protected the complainant. Instead you have breached the trust expected from you and the breach was gross.
- (ii) There was a large disparity in age between you and the complainant. The complainant was only 6 years of age, at the time you committed these offences on her. At the time of the offending you were 73 years of age. Therefore, you were over 65 years older than the complainant at the time.
- (iii) You took advantage of the complainant's vulnerability, helplessness and naivety.
- (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the complainant of her innocence.
- (v) The complainant has been emotionally and psychologically traumatized by your actions.
- (vi) The frequent prevalence of the offence of Rape in our society today, specially cases of child rape.

(vii) You are now convicted of multiple offending.

[31] Considering the aforementioned aggravating factors, I increase your sentences by a further 7 years. Now your sentences are 18 years imprisonment for each of the counts of Rape.

[32] Robert William Stoman, you are now 77 years of age (Your date of birth being 1 September 1945). In a few days from now, you will be turning 78. You are married and had lived with your children. However, it is stated that your family is residing at 7 Shibor Drive, Vermont, Melbourne, Victoria, Australia. You are said to be a retired person and volunteered at the Salvation Army prior to being charged for this case. It is stated that you are a very active member of the community and neighbourhood and always assisted those in need.

[33] Unfortunately, these are strictly personal circumstances and cannot be considered as mitigating circumstances.

[34] In mitigation it is submitted that you have been a person of previous good character. In support of this claim, character reference letters have been submitted by the following:

- (1) Andrew of Melbourne, Australia.
- (2) Pam Wilson of Melbourne, Australia.
- (3) Major Peter Walker, Corps Officer, The Salvation Army, Ringwood.
- (4) Margaret Curphy (your ex-wife).
- (5) Marian Pamela Duke of Queensland, Australia.
- (6) Cheryl Flack.
- (7) Andrew Vial of Queensland, Australia.
- (8) Shane Martin.
- (9) Amanda Wilson of Victoria, Australia.
- (10) James and Margaret Allison of Victoria, Australia.

[35] I agree that you have been a person of previous good character. You are also a first offender. The State Counsel too has confirmed this position. It is also submitted that you fully co-operated with the Police during the investigations into this matter. Accordingly, considering the aforesaid mitigating factors I reduce 3 years from your sentences. Now your sentence will be 15 years imprisonment for each of the counts of Rape.

[36] I will now deal with the fifth count of Pornographic Activities Involving Juveniles, contrary to Section 62A (1) (b) of the Juveniles Act No. 13 of 1973, as amended by the

Juvenile (Amendment) Act No. 29 of 1997 [Juveniles Act]. Section 62A (1) of the Juveniles Act prescribes the punishment for pornographic activities involving juveniles as follows;

(i) In the case of a first offender, to a fine not exceeding \$ 25,000 or a term of imprisonment not exceeding 14 years, or both; or

(ii) In the case of a second or subsequent offence, to a fine not exceeding \$ 50,000 or life imprisonment or both.

[37] There is no set tariff for this offence.

[38] His Lordship Justice Wimalasena in *State v. Koronibau* [2019] FJHC 1176; HAC173.2015 (28 November 2019); held that in the absence of any sentencing guidelines in respect of this particular offence it would be pertinent to review sentencing guidelines adopted in other similar jurisdictions and made reference to the UK Sentencing Guidelines on this matter.

[39] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating and mitigating factors, I impose on you a sentence of 3 years' imprisonment for the fifth count of Pornographic Activities Involving Juveniles.

[40] In the circumstances, your sentences are as follows:

Count 1- Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act – 15 years' imprisonment.

Count 2 – Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act – 15 years' imprisonment.

Count 4- Rape contrary to Section 207 (1) and 2(b) and (3) of the Crimes Act – 15 years' imprisonment.

Count 5 – Pornographic Activities Involving Juveniles contrary to Section 62A (1) (b) of the Juveniles Act – 3 years' imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 15 years.

[41] Accordingly, I sentence you to a term of 15 years imprisonment.

[42] The next issue for consideration is whether this Court should grant you any concessions due to your current advanced age of 77 years.

[43] Her Ladyship Madam Justice Nazhat Shameem in the case of *Rokota v. The State* (*supra*) held as follows:

“...However, the Appellant is 64 years old. There are special sentencing principles for the sentencing of the elderly, particularly those of previous good character.”

- [44] Making reference to Principles of Sentencing (2nd Edition), by D. A. Thomas, Her Ladyship said:

“Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly offenders, and the Court has upheld sentences of imprisonment on men in their seventies. It is however a long-established principle that a sentence should normally be shortened so as to avoid the possibility that the offender will not live to be released.”

- [45] However, considering all the facts and circumstances of this case, especially the fact that the complainant was known to you and trusted you and was merely 6 years of age at the time of the incidents, I am not inclined to reduce the primary sentence or head sentence I am imposing on you.

- [46] Accordingly, I sentence you to a term of 15 years’ imprisonment. However, in determining the non-parole period to be imposed on you, I have given due consideration to your advanced age. Accordingly, pursuant to the provisions of Section 18 (1) of the Sentencing and Penalties Act, I fix your non-parole period as 8 years’ imprisonment.

- [47] Considering your advanced age, I order the Correction Authorities to ensure that you are provided proper facilities while you are serving your sentence of imprisonment.

- [48] Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

- [49] You were arrested for this matter on 9 January 2019 and produced in the Magistrate’s Court of Nadi on 14 January 2019 and remanded into custody. You were granted bail by the High Court on 8 July 2020. That is a period of 1 year and 6 months in custody. Thereafter, you were again remanded into custody on 4 May 2023, the day on which you were found guilty and convicted by this Court. You have been in remand custody since that day. That is a further period of 3 months. The total period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 1 year and 9 months (21 months) should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

- [50] In the result, your final sentence is as follows:

Head Sentence - 15 years’ imprisonment.

Non-parole period - 8 years' imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 13 years' and 3 months imprisonment.

Non-parole period - 6 years' and 3 months imprisonment.

[51] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 11th Day of August 2023

Solicitors for the State: Office of the Director of Public Prosecutions, Lautoka.
Solicitors for the Accused: Messers Iqbal Khan & Associates, Barristers & Solicitors, Lautoka.