

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 177 OF 2021

BETWEEN

STATE

SAIMONI DRUGU

Counsel

Ms U Tamanikaiyaroi for the State

Ms R Nabainivalu for the Accused

Date of Hearing

9-10 August 2023

Date of Judgment :

29 September 2023

Date of Sentence :

18 October 2023

SENTENCE

- [1] The accused was convicted after trial of two counts of rape, five counts of sexual assault and one count of criminal intimidation.
- [2] The maximum sentence that the accused is facing is life imprisonment. The tariff for rape of a child is 11-20 years imprisonment.
- [3] The victim is the biological daughter of the accused. The sexual assault started in 2016 when the victim was ten years old.
- [4] The accused was in his thirties at the time. He was married to the victim's mother. Together they had six children. The victim was the only daughter and the youngest.

- [5] The accused is a former military and a prison officer. He was terminated from those positions for reasons not known.
- [6] The first two charges of sexual assault and one charge of criminal intimidation arose from the same transaction. The victim was left alone with the accused with two younger siblings at their home in Lami.
- [7] After consuming alcohol, the accused forced the victim's siblings to sleep. He got the victim into his bedroom, closed the door and made her lie on his bed facing down. He removed her pants and underwear and then told her that he was going to rub his penis on her buttocks. He did rub his penis on her buttocks until he ejaculated. She felt his penis on her buttocks. He was naked. She felt her buttocks were wet with fluids. She did not know what it was. She was scared and crying.
- [8] The accused then stood up and kissed the victim on her mouth. She heard him praying saying "Father we have just finished our lesson'. He accompanied her to the bathroom and while she was cleaning herself he threatened her not to tell anyone especially her mother or he will kill her. The victim did not complain to anyone because she was scared of the accused.
- [9] The 2017 incident occurred when the victim accompanied the accused in his vehicle to buy cooking gas. The accused drove to a remote location in Lami and parked his vehicle. He came to the back seat of the car where the victim was sitting and forced her to take her tongue out. He sucked her tongue and while doing that he unzipped his pants and took his penis out. He stroked his penis with his hand while kissing the victim on her mouth. He then told the victim to suck his penis like a lollipop. When she refused, he threatened to throw her down the cliff. She cried. She felt disgusted.

- [10] The victim sucked the accused's penis until he ejaculated. When she wanted to spit the fluids out he told her to swallow it. At the time she didn't know what it was. He told her it was sperm. After the incident they returned home. She did not complain to anyone because she was scared of the accused.
- [11] The 2018 incident occurred when the victim accompanied her mother to Nadi to pick up the accused who had returned from Iraq. She was in class seven then. They stayed in a hotel in Nadi. The accused bought drinks and he made the victim's mother and older siblings to drink with him.
- [12] Around lunchtime, the accused got the victim to accompany him in their vehicle to buy lunch. He drove to a remote location and parked the vehicle. He came to the back seat of the car and started kissing the victim on the mouth. While kissing he also penetrated her vagina with his fingers. After that they returned to the hotel. She did not complain to anyone because she was scared of the accused.
- [13] The 2019 incident occurred in a hotel in Nadi when the accused returned from Iraq. The victim's mother and siblings had gone somewhere. The accused made the victim accompany him to the toilet. He locked the toilet door and removed her pants and underwear. He kissed her on the mouth. While he was doing that there was a knock at the door. He told her to quickly dress up and lie down and pretend to be sleeping.
- [14] When the families came to know about the sexual abuse, they reported the matter to police. The accused denied the allegation and claimed he was framed by his former girlfriend out of spite. He has expressed very little remorse for his crime.
- [15] The accused is now 45 years old. The Corrections Department has provided a reference for the accused stating that he was a model inmate while in custody on

remand. Further, he has served as a private security officer in a war torn country, Iraq. The accused's previous good character is the only mitigating factor in this case.

- [16] However, the accused has caused considerable physical and psychological harm to the victim. He breached her trust as her biological father. She was distressed, crying during the incidents of abuse which included sexual assault on five occasions and digital rape on two occasions. The abuse continued for a period of four years. The victim was extremely vulnerable due to her tender age. The accused used his authority to justify his conduct saying all fathers do these things to teach their daughters about sex. She did not know what was happening to her. She was being groomed by the accused for his own sexual gratification, which he justified on the ground of spirituality. When the accused ejaculated he forced the victim to swallow his semen. He made threats to kill her if she complained to anyone.
- [17] This is a horrific case of sexual violence on a child by her own biological father, the accused. The victim was subjected to an inhumane treatment by someone who had a duty to protect her. The court denounces the crimes committed by the accused on the victim in the strongest terms.
- [18] For two counts of rape (counts 6 & 11), I pick an aggregate term of 14 years imprisonment as a starting point, add 6 years to reflect the aggravating factors and deduct 2 years to reflect the mitigating factors.
- [19] The accused is sentenced to an aggregate term of 18 years imprisonment for rape on counts six and eleven.
- [20] For sexual assault (counts 1, 2, 5, 10, 12), the accused is sentenced to an aggregate maximum sentence of 10 years imprisonment.

- [21] For criminal intimidation (count 4), the accused is sentenced to 4 years imprisonment.
- [22] All terms are made concurrent. The total effective sentence is 18 years imprisonment.
- [23] The accused has served 2 years in custody on remand. This period is considered sentence already served.
- [24] The remaining sentence for the accused to serve is 16 years imprisonment with a non-parole period of 12 years.
- [25] The DVRO is made permanent.



A handwritten signature in blue ink, appearing to be "D. Goundar", is written above a horizontal line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused