

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 216 of 2023

The State -v- Veleki Bulicokocoko

For the State: Ms. P. Kumar
For the Accused: Ms. B. Kinivuwai

Date of Judgment: 7th May 2024
Date of Sentence: 2nd July 2024

SENTENCE

1. The Accused Veleki Bulicokocoko was convicted on the following 4 counts on the Amended Information: -

AMENDED INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS

COUNT 1

[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, unlawfully and indecently assaulted **MAKALESİ TINANIBOLACIRI TABUAKOVEI**, by kissing her mouth and touching her body

COUNT 2

[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, penetrated the vagina of **MAKALESİ TINANIBOLACIRI TABUAKOVEI**, a child under the age of 13 years with his tongue.

COUNT 3
[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, penetrated the anus of **MAKALESİ TINANIBOLACIRI TABUAKOVEI**, a child under the age of 13 years with his tongue.

COUNT 4
[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, penetrated the vagina of **MAKALESİ TINANIBOLACIRI TABUAKOVEI**, a child under the age of 13 years with his finger

2. At the sentencing hearing, the Accused filed the following plea in mitigation: -

Mitigation

3. He is 58 years old and he is employed as Security Guard at Smart Security earning \$150 per fortnight.
4. He is an active member of the village partaking in all village activities, church functions and he also assists the Turaga ni Koro when required.
5. He resided at Deuba prior to the incident.

6. He is 58 years old and is a first offender and a person of previous good conduct.
7. Counsel submits section 4 (2) of the Sentencing and Penalties Act and submits that the Court take into consideration the fact that he is a first offender and a person of previous good conduct. He asks for leniency.
8. The current law on rape of children was set in the case of Aitcheson vs State [2018] FJSC; CAV 12 of 2018 (2nd November 2018) which set the tariff for the rape of young children is between 11 to 20 years of imprisonment.
9. The Accused submits that the Court ought to consider the one transaction rule in sentencing the Accused to also bear in mind the totality principle and to consider a concurrent sentence in respect of each count.
10. The Accused therefore seeks an appropriate sentence for the offending in this matter.
11. The State also filed sentencing submissions in this matter.

Sentencing Recommendations

12. The State submits that the maximum penalty for Sexual Assault is 10 years imprisonment, and the accepted tariff of 2 – 8 years imprisonment was set in the case of State vs Epeli Ratabacaca Laca [2012] FJHC 252 (14 November 2012).
13. The above authority set out the three categories of offending as follows: -
 - **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 between naked genitalia of the victim by the offender using part of his or her 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.

- **Category 3:** Contact between parts of the offender's body (other than genitalia) with part of the victim's body (other than the genitalia.)
14. The offence of Rape attracts a maximum sentence of life imprisonment, and the accepted tariff was set by the case of Gordon Aitcheson vs State CAV 12 of 2018, the tariff ranges from 11 to 20 years imprisonment.
 15. The State identifies the following aggravating factors for the offending in this case: -
 - (a) Gross abuse and breach of trust – the Complainant considered the Accused as an uncle and the Accused grossly breached that trust by repeatedly sexually assaulting her and raping her.
 - (b) The Complainant was vulnerable and there was an age difference of 47 years.
 - (c) The incidents exposed the innocent mind of the Complainant to sexual activity at a young age.
 - (d) Pre-planning by the Accused
 - (e) The impact of the offending on the Complainant – traumatic and continuing harm.
 16. The State submits that the Accused was remanded for approximately 1 year 3 days, and this period is to be deducted as time already served.
 17. The State recommends that the sentence must reflect the criminality displayed by the Accused.
 18. The State submits that the Accused was in a position of trust, and he abused that power and trust and offended against the Complainant. The offending in this case requires that this Court send out the message that such actions will not be tolerated.
 19. The State also requires that the Court issue a permanent name suppression order and a final Domestic Violence Restraining Order for the protection of the complainant.

Analysis

20. Veleki Bulicokocoko was 58 years of age at the times when he committed these offences on the Complainant, his niece, who at that time was 11 years of age. There is a 47-year age gap, and she respected him as an uncle, referring to him as Vava Levu or elder uncle.

21. The facts that unfolded at the Trial indicate that he groomed the Complainant, and the incidents were planned as they all occurred whenever they were alone together in his home. He committed the offences using his authority as her elder relative and got her to remain silent about it by threatening and intimidating her. These factors aggravate the offending.

22. The personal culpability of the Accused Veleki Bulicokocoko is therefore very high and requires a condign sentence that reflects society's abhorrence of such offences against vulnerable members of society, such as young girls.

23. The Court, in preparing the sentence has considered section 4 of the Sentencing and Penalties Act 2009 and the guidelines for sentencing. In particular Section 4(3), as this is a domestic violence offence.

24. In setting the new tariff for child rape in the case of State vs Gordon Aitcheson (supra), their Lordships made the following observations: -

“[21] Counsel for the State urges us to enhance sentence. She has prepared voluminous materials of case law and writings on the subject of increased prevalence of child rape and on abuse cases generally. She has put material before us of the menace such criminality is in our society as indeed elsewhere in the world. We are grateful for the scope of that research and for the statistics provided.

[22] We accept there is a serious problem which needs the co-operation of the courts to stem. I reproduce the DPP's published statistics:

ODPP Sexual Offences Statistics (Victims) – 2015 – 2018					
Year	Total Victims	Victims U18	Victims U13	Victims U8	Victims U5
2018 (Jan-Sep)	185	111	65	27	11
2017	444	130	72	27	16
2016	228	150	70	20	12
2015	138	87	40	19	8
TOTAL	995	478	247	93	47

Source: ODPP Fiji

[23] The increases are obvious. Even this court now has many more of such cases coming before it. This sittings is also remarkable for the number of such cases listed for consideration.

[24] The increasing prevalence of these crimes, crimes characterized by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

[25] 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.”

25. There are very few mitigating factors in favour of the Accused Veleki Bulicokocoko. He is a first offender and a person of previous good conduct and he will receive a discount for this.
26. The other factors advanced by counsel in his favour are not mitigating factors but rather are his personal circumstances.
27. For this matter he was remanded for 1 year 3 days therefore this period will be deducted as time already served.

Sentencing Remarks


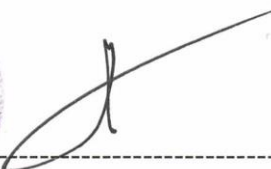
28. Veleki Bulicokocoko, these offences were committed by you as part of a series of offences in your home against the Complainant. The Court will therefore impose an aggregate sentence on these 4 counts in the Information, pursuant to section 17 of the Sentencing and Penalties Act.
29. For the offence of Sexual Assault, the Court finds that the nature of the offending falls into Category 3 of offending.
30. In sentencing you for the representative count of Sexual Assault I adopt a starting point of 2 years imprisonment and I add 2 years for the aggravating factors set out above.
31. For your previous good conduct as a first offender your sentence is deducted by 1 year leaving you with a sentence of 3 years imprisonment.
32. For the offence of Rape I adopt a starting point of 12 years imprisonment and for the aggravating factors set out above I add 3 years.
33. For your previous good conduct, I reduce the sentence by 2 years leaving you with a sentence of 13 years.
34. As these are aggregate sentences, Veleki Bulicokocoko your current term of imprisonment is 13 years imprisonment.
35. You have spent 1 year 3 days in remand and this is deducted from your aggregate sentence leaving you with a final aggregate sentence of 12 years 11 months and 28 days imprisonment.
36. Pursuant to section 18 of the Sentencing and Penalties Act I impose a non-parole period of 10 years 11 months and 28 days.
37. This is a sentence that reflects the Court's denunciation of your actions, and balances that with the prospects of your rehabilitation within the non-parole period.

38. There will also be a final Domestic Violence Restraining Order for the continuing protection of the Complainant.

Veleki Bulicokocoko this is your aggregate sentence: -

1. For the one count of **Sexual Assault** and the three counts of **Rape** you are sentenced to 12 years 11 months and 28 days imprisonment.
2. You will serve a non-parole period of 10 years 11 months and 28 days.
3. I issue a final Domestic Violence Restraining Order – standard non molestation conditions and additional Non-Contact orders, for the protection of the Complainant.
4. You are hereby on notice that if there is any breach of these final orders, then you will be subject to prosecution for the same.

30 days to appeal

The seal of the High Court of Fiji is circular, featuring a central emblem with a crown and two figures, surrounded by the text "HIGH COURT OF FIJI" and "SUVA".
A handwritten signature in black ink, appearing to be "U. Ratuville", is written over a horizontal dashed line.
Mr. Justice U. Ratuville
Pusine Judge

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