

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 07 of 2024

STATE

V

MARSEU SEFETI INOKE

Counsel : Ms. Rukalesi Uce with Mr. Muhammed Rafiq for the State
Ms. Karishma Kumar with Mr. Alifereti Waqavakatoga for the
Accused

Sentence Hearing : 10 September 2024

Sentence : 11 October 2024

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "UMMQ".

SENTENCE

[1] Marseu Sefeti Inoke, as per the Amended Information filed by the Director of Public Prosecutions (DPP), you were charged, with the following offence:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MARSEU SEFETI INOKE, on the 23rd day of December 2023, at Sigatoka, in the Western Division, had penetrated the vulva of UMMQ with his tongue, a child under 13 years.

- [2] This matter was first called before the High Court on 16 January 2024. The information was filed and served on 29 April 2024; and the Disclosures relevant to the case were filed and served on 2 May 2024. The matter was then adjourned for plea. When the plea was first taken, on 8 May 2024, you pleaded not guilty to the charge.
- [3] On 22 May 2024, Court permitted the State to make an amendment to the information in open Court. On the same day, your Learned Counsel informed Court that you were willing to take a progressive approach in the matter. Accordingly, you pleaded guilty to the single count in the Amended Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your guilty plea.
- [4] On 5 June 2024, the Summary of Facts were filed in Court and were read out and explained to you. You said you understood and agreed to the same. Accordingly, Court found your guilty plea in respect of the charge of Rape to be unequivocal. I found that the facts support all elements of the count of Rape in the Amended Information, and found the said count proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the count of Rape as charged.
- [5] Thereafter, this matter was fixed for sentence hearing on 7 August 2024. Marseu Sefeti Inoke, on that day your Learned Counsel informed Court that you had alleged that you had been wrongly advised as to your plea. In the circumstances, your Counsel moved that your plea of guilt be vacated.
- [6] However, it was clear to this Court that you had understood and admitted to the Summary of Facts on the day it was read out to you. Accordingly, this Court had determined that your guilty plea in respect of the charge of Rape to be unequivocal. Only thereafter did Court find you guilty on your own plea and convict you of the count of Rape. This Court was also mindful of what you had informed Court through your Learned Counsel on 8 May 2024, when you had pleaded not guilty to the charge on the said day. The Court Record will speak for itself. Therefore, this Court did not permit your application to withdraw or vacate your plea of guilt.
- [7] Marseu Sefeti Inoke, I now proceed to pass sentence on you in respect of the count of Rape.
- [8] The Summary of Facts filed by the State was as follows:
1. *The Accused is one Marseu Sefeti Inoke [male] who was 50 years old at the time of the offence and is of Naicovi, Cuvu, Sigatoka, Unemployed.*
 2. *The Victim is one UMMQ [female] who was 10 years old at the time of the offence and is also of Naicovi, Cuvu, Sigatoka.*
 3. *The Accused is the Victim's uncle. The Victim's father's sister (Victim's aunt) is married to the Accused.*

4. *On the 23rd December 2023, around 2.00 p.m. at Naicovi, Cuvu, Sigatoka, the Victim was returning from the beach after swimming when the Accused who was at his home, alone, had called the Victim inside his house. The Victim was heading towards her home and was walking past the Accused's house at this time.*
5. *The Accused took the Victim inside his house then inside his bedroom, and made her undress herself. He closed the main door of the house and the bedroom door. He then put a "Sulu" (fabric/wrap around skirt) on the floor of the bedroom and laid the Victim down on it. He then laid down and spread the Victim's legs and put them on his shoulder. After this, he began licking the Victim's vagina using his tongue. The Victim explains that while he was licking her vagina, he was moving his tongue up and down. The Accused had not penetrated his tongue inside the vaginal opening but only penetrated the Victim's vulva with his tongue. The Victim explains in her statements that the Accused had licked her vagina between the surface and vaginal opening.*
6. *While the Accused was doing this, the Accused's wife (Silina) to his surprise had come back home and began knocking on the front door. At this point in time, the Accused told the Victim to hide under his bed, and the Victim, followed the Accused's instructions. The Accused opened the door of his house to let Silina inside. Silina then found a pink panty on the floor of their bedroom and then she managed to find the Victim hiding under the bed. Silina then asked the Victim why she was laying naked under the bed and the Victim then relayed the entire incident to her. The Accused had by then left the house. Silina then took the Victim to her (the Victim's) home and relayed the incident to the Victim's mother (Teresia).*
7. *The matter was then reported to Police by the Victim's mother. The Accused was arrested and questioned under caution, on video recording, whereby he fully admitted to committing the offence and also confessed to Police that this was the third time he had done this.*

Annexed hereto and marked as "ANNEXURE A" is a copy of the transcript of the Accused's Video Recorded Caution Interview.

8. *On the date of his plea, the Accused had pleaded guilty on his own free will in the presence of his Counsel in Court.*
9. *The Victim was medically examined however there are no material medical evidence as the offence only involved oral penetration of the vulva. There were no injuries noted.*

[9] *Marseu Sefeti Inoke, you have admitted to the above Summary of Facts and taken full responsibility for your actions.*

[10] The complainant's date of birth is 11 May 2013 [As per her Birth Certificate]. Therefore, at the time you committed this offence on her, the complainant was just 10 years of age and, as such, a juvenile. You are the uncle of the complainant. Your wife is the sister of the complainant's father. Therefore, this is an offence which is in the nature of a domestic violence.

[11] 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.

[12] I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and 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.

[13] Section 4(2) of the Sentencing and Penalties Act provides that a Court must also consider the following factors when sentencing an offender:

(2) In sentencing offenders a court must have regard to —

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

(c) the nature and gravity of the particular offence;

(d) the offender's culpability and degree of responsibility for the offence;

(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;

(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

(i) the offender's previous character;

(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.

[14] Furthermore, Section 4 (3) of the Sentencing and Penalties Act stipulates the factors that a Court must have regard to in sentencing offenders for a domestic violence offence.

"(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender's —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance."

[15] Marseu Sefeti Inoke, I have duly considered the above factors as well in determining the sentence to be imposed on you.

[16] The offence of Rape in terms of Section 207(1) of the 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 case of *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 *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. Tauvofi* [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 unmalesed. 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 also 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 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 *Aitchison v State* [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates (with Justice Saleem Marsoof and Madam Justice Chandra Ekanayake agreeing) 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 *Laisiosa Koroluviki 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] Marseu Sefeti Inoke, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 11 years imprisonment for the count of Rape.

[30] The aggravating factors are as follows:

- (i) Breach of trust. You are related to the complainant. You are her uncle. Your wife is the sister of the complainant's father. 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. At the time of the incident the complainant was only 10 years of age. At the time you were 50 years of age. Therefore, you were 40 years older than the complainant at the time of the offending or more than four times older than her.
- (iii) You took advantage of the complainant's vulnerability, helplessness and naivety and thereby paid no regard to her personal security, dignity or privacy.
- (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 frequent prevalence of the offence of Rape in our society today, especially cases of child Rape.

[31] In mitigation you have submitted as follows:

- (i) That you are a first offender.
- (ii) You have submitted that you are truly remorseful of your actions.
- (iii) You have fully co-operated with the Police when you were taken in for questioning and subsequently charged for this matter instead of trying to circumvent the course of justice.
- (iv) That you entered a guilty plea during the course of these proceedings.

[32] Marseu Sefeti Inoke, you are now 51 years of age (Your date of birth being 23 June 1973). You have six children - a 27 year old daughter and five sons-who are in the ages of 24, 22, 15, 11 and 9. Prior to being remanded for this case, you were said to be residing at Voua Village, Cuvu, Nadroga. You were said to be self-employed as a Driver, earning approximately \$500.00 per week. However, the above are all personal circumstances and cannot be considered as mitigating circumstances.

[33] Marseu Sefeti Inoke, considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence for the count of Rape would be 16 years imprisonment.

[34] Marseu Sefeti Inoke, as per the Antecedent Report (Previous Convictions Report) submitted by the State, it is noted that you have one previous conviction dating back to 6 January 1998. On that day, you had been sentenced by the Magistrate's Court of Sigatoka to 12 months imprisonment, which term was suspended for 2 years, for the offence of Larceny (Magistrate's Court of Sigatoka Case No: 23 of 1998).

[35] In terms of Section 3 of the Rehabilitation of Offenders (Irrelevant Convictions) Act No. 11 of 1997 [Rehabilitation of Offenders (Irrelevant Convictions) Act], the term "irrelevant conviction" has been defined in the following manner:

3. For the purposes of this Act, a conviction is irrelevant:-

(a) where there is no direct relationship between that conviction and the particular matter in respect of which it is sought to take that conviction into account; or

(b) if the rehabilitation period has expired.

[36] Section 4 of the Act broadly defines what "direct relationship" means; while Section 5 of the Act defines the term "rehabilitation period" as follows:

5.-(1) Notwithstanding subsection (2), the rehabilitation period applicable to a conviction is:

(a) in case of a person who is seventeen years or over, ten years; or

(b) in case of a person who is under the age of seventeen years, -

(i) seven years, for a term of imprisonment or detention not exceeding two years under section 30 or 31 of the Juveniles Act; or

(ii) ten years, for a term of imprisonment or detention exceeding two years under section 31 of the Juveniles Act.

(2) Subject to subsection (1), the rehabilitation period applicable to Part III, is five years.

[Emphasis is my own].

[37] Section 6(1) of the Rehabilitation of Offenders (Irrelevant Convictions) Act provides:

6.-(1) The rehabilitation period commences:-

(a) on the date of conviction; or

(b) where a custodial sentence was imposed, on the date: on which the convicted person was unconditionally released from imprisonment; or

(c) where the release of a convicted person from detention is subject to a condition or other penalty imposed by the Court, when the condition or that other penalty is fulfilled.

[38] The operational period of the suspended sentence imposed on you by the Magistrate's Court of Sigatoka would have lapsed on 6 January 2000. Therefore, in terms of the Rehabilitation of Offenders (Irrelevant Convictions) Act, your rehabilitation period would have commenced on that day. The rehabilitation period of 10 years would have been completed on 6 January 2010. The offence you are now convicted of was committed by you on 23 December 2023, which is well beyond the rehabilitation period, and makes the previous conviction irrelevant.

[39] As such, Marseu Sefeti Inoke, I can consider you as first offender for the purpose of this sentence. Furthermore, I accept your remorse as genuine and also the fact that you fully cooperated with the Police in this matter. Accordingly, considering the above mitigating factors, I deduct two years from your sentence. Now your sentence for the count of Rape would be 14 years imprisonment.

[40] Marseu Sefeti Inoke, although not at the very outset, you entered a guilty plea at an early stage of these proceedings. In doing so you saved precious time and resources of this Court, instead of proceeding with the matter for trial. More importantly, you saved the complainant from having to give evidence and thereby re-live the incident all over again. For your guilty plea I grant you a further discount of 4 years. Now your sentence for the count of Rape would be 10 years imprisonment.

[41] Accordingly, I sentence you to a term of 10 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 8 years imprisonment.

[42] 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."

[43] You were arrested for this case and produced in the Sigatoka Magistrate's Court on 26 December 2023 and remanded into custody. You have remained in custody since that day. Accordingly, you have been in custody for a total period of 9 ½ months. The period you have been in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 9 ½ months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

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

Head Sentence - 10 years imprisonment.

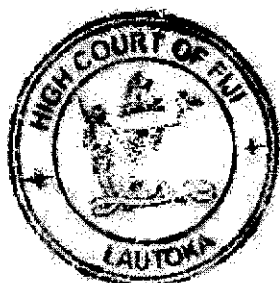
Non-parole period - 8 years imprisonment.

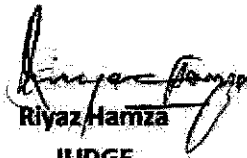
Considering the time you have spent in remand, the time remaining to be served by you is as follows:

Head Sentence - 9 years and 2 ½ months imprisonment.

Non-parole period - 7 years and 2 ½ months imprisonment.

[45] 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 October 2024.

Solicitors for the State : **Office of the Director of Public Prosecutions, Lautoka.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Lautoka.**