

IN THE HIGH COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 289 of 2022

The State –v- Uraia Kolomavu

For the State: Mr. S. Seruvatu and Ms. E. Sautu

For the Accused: Mr. P. Gade

Date of Trial: 1st July to 8th July 2024

Date of Judgment: 23rd September 2024

Date of Sentence: 08th November 2024

“The name of the complainant is suppressed. Accordingly, the complainant will be referred to as “MSW”

SENTENCE

1. The Accused, Uraia Kolomavu was found guilty by this Court of the following offences in the Amended Information filed on the 25th of June 2024:

**AMENDED INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS**

URAIA KOLOMAVU is charged with the following offences:

**COUNT ONE
[REPRESENTATIVE COUNT]**

Statement of Offence

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

Particulars of Offence

URAIA KOLOMAVU, between the 26th day of December 2020 and the 31st day of December 2020, at Naloto Village, in Verata, Tailevu in the Eastern Division, penetrated the vagina of **MSW** with his penis without her consent.

COUNT TWO
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of January and 31st January 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT THREE
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of February 2021 and 28th February 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT FOUR
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of March 2021 and 31st March 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT FIVE
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of April 2021 and 30th April 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT SIX
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of May 2021 and 31st May 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT SEVEN
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of June 2021 and 28th day of June 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT EIGHT
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of July 2021 and 31st July 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT NINE
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of August 2021 and 31st day of August 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

COUNT TEN
[REPRESENTATIVE COUNT]

Statement of Offence

RAPE: Contrary to section 2017 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

URAIA KOLOMAVU between the 1st day of September 2021 and 25th day of September 2021, at Naloto village, in Verata Tailevu, in the Eastern Division, penetrated the vagina of **MSW** with his penis, without her consent.

2. The Accused entered a not guilty plea to all counts and after Trial he now stands convicted on all counts.
3. The brief facts are that on at least 10 occasions, at Naloto, Verata Tailevu, from the 26th of December 2020 to the 25th of September 2021, Uraia Kolomavu had sexual intercourse with his stepdaughter MSW, without her consent. He committed the offences through abuse of his role and by threats and intimidation.
4. Uraia Kolomavu is a first offender and counsel has offered the plea in mitigation as follows:-

Mitigation

5. In mitigation, counsel presents the following submissions: -
 - i. Uraia Kolomavu is now 38 years of age, date of birth was on 17/4/1986.
 - ii. He is married with 4 children, 12 years, 9 years, 7 years and 3 months respectively.
 - iii. He is a subsistence farmer, planting for his own consumption.
 - iv. He has spent 4 months in custody and this period in remand should be deducted from the final sentence.
 - v. The maximum penalty for the offence of Rape is life imprisonment. The previous tariff for child rape was set by the case of Anand Abhay Raj vs The State [2014] FJSC 12; CAV 3 of 2014 (20 August 2014) – a range between 10 and 16 years imprisonment.
 - vi. The current tariff for child rape has now been set by the Supreme Court in Aitcheson vs State [2018] FJSC 29; CAV 12 of 2018 (2 November 2018), and the new tariff for child rape is a sentence between 11 years and 20 years imprisonment.
 - vii. Counsel submits that the Court also consider the factors set out by the Supreme Court and cites the case of Felix Ram vs State [2015] FJSC 26; CAV 12 of 2015 (23 October 2015) as follows: -

“Factors to be considered in such cases could be:

- (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 especially 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.”

6. The Accused, through counsel therefore submits that the Court take into account that he is a first offender and a person of previous good conduct.

7. In selecting the starting point, the Accused relies on the Court of Appeal case of Koroivuki vs State [2013] FJCA 15 where the Court stated: -

“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 stage. As a matter of good practice, the starting point should be priced from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within eh 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.”

8. The Accused submits that based on the entire circumstances of the offending and the personal background of the accused person, he pleads for the Court’s leniency and for any favourable discount that the Court may wish to award to him.

Sentencing Recommendations

9. The State has also filed sentencing submissions and submits as follows: -

- i. The State submits that section 4 of the Sentencing and Penalties Act requires the court to have regard to the maximum penalty prescribed for the offence, the current sentencing practice and applicable guidelines issued by the Courts.
- ii. The Court is also required to consider the nature and gravity of the offence and the impact or harm the crimes may have had on the victim.
- iii. The offence of Rape carries a maximum sentence of life imprisonment. The intent of the Legislature signifies the country’s position in denouncing the offence of Rape. It also creates an obligation for the Court to send clear deterrent messages to would be offenders in society.
- iv. The tariff for child rape, as in this case, was introduced by the Supreme Court in the case of *Aitcheson vs State* [2018] FJSC 29; CAV 12 of 2018 (2 November 2018). The tariff now stands at 11 – 20 years’ imprisonment.
- v. The State offers the following as aggravating factors: -
 - (a) Gross breach of trust as the Accused was the victim’s stepfather and even though he is not her biological father, she considered him as her father, and he abused his authority to commit these offences.
 - (b) The victim was susceptible, innocent and in her teens and she was subjected to these repeat attacks by the Accused.
 - (c) The victim was 16 at the time of the offending and the Accused was 34, an 18-year age difference, which the Accused exploited to commit the offence.
 - (d) These types of offences are prevalent, and the Court needs to send a deterrent message to the Accused and other like-minded offenders that the Courts will come

down hard on such offenders (State vs Mario Tauvoli [2011] FJHC 216, HAC 27 of 2011.)

- vi The victim has also tendered a Victim Impact Statement, and she submits as follows: -
 - (a) She is no longer the same person she was prior to these series of events of sexual abuse.
 - (b) Her schoolwork suffered and after she left the village to go and live with her aunt in Lautoka, she had to repeat a year due to her poor results from Tailevu North College.
 - (c) She submits that the Accused has robbed her of her youth and what he has done will remain with her for a long time.
- vii In Sharma vs State [2017] FJSC 5; CAV 0031 of 2016 (20 April 2017), the Supreme Court stated that the sentencing Court may take matters stated in the Victim Impact Statement into account when determining the term of imprisonment that is to be imposed on the accused.
- viii The Accused was remanded from 12th August 2022 till he was bailed on 1st of November 2022, a period of 2 months and 21 days. This period will be deducted from his sentence for time already served by him.
- ix The State recommends a sentence that directly and clearly denounces the conduct of the Accused in the strongest terms. The sentence must also be a sentence that will be of general deterrence to other would-be offenders
- x In addition to an appropriate sentence, the State requests that the Court impose a permanent Domestic Violence Restraining Order against the Accused for the protection of the complainant.

Analysis

10. The purposes for sentencing are set out at section 4 (1) of the Sentencing and Penalties Act, which provides 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.

11. Section 4 (2) of the Sentencing and Penalties Act then set out the factors that the Court must have regard to: -

“(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 Act;
- (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 Act as being grounds for applying a particular sentencing option.”

12. The offences in this case were committed over a 10 months period, nevertheless they can be considered as one transaction therefore it is appropriate to impose an aggregate sentence pursuant to section 17 of the Sentencing and Penalties Act.

Sentencing Remarks

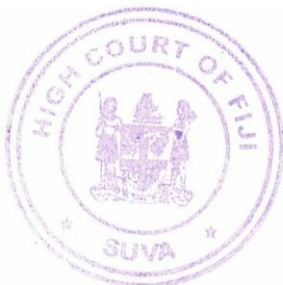
13. Uraia Kolomavu, you have been convicted of 10 counts of Rape. These acts were committed over a period of 10 months and the victim was your wife's daughter from a previous relationship, thus there is a domestic relationship between you and section 4 (3) of the Sentencing and Penalties Act must be considered by the Court in preparing your sentence.
14. The victim was entitled to expect your protection and care, yet you abused your authority to commit these offences. Your actions were a serious breach of trust and require a condign sentence that will make it clear that the Courts will not condone such abuse.
15. The above factors aggravate the offending.
16. You are a first offender and a person of previous good conduct. You will get some credit for your previous good conduct although obviously it will not be as much as would normally be the case due to the nature of the offending in this case.
17. You have been remanded for 2 months 21 days, which will be rounded up to 3 months so this period will be deducted as time already served by you.
18. The tariff for child rape has been set out by the Supreme Court in Aitcheson vs State (supra) and ranges from 11 to 20 years' imprisonment.
19. These offences were committed over a period of 10 months and although no extreme violence was used to commit the offence, you exercised your authority and intimidated and threatened the victim to compel her to submit to you. Your personal culpability is high therefore I will adopt a starting point of 13 years' imprisonment.
20. For the aggravating factors set out above your sentence is enhanced by 3 years and for your previous good conduct as a first offender your sentence is reduced by 2 years.
21. This leaves you with an interim aggregate sentence of 14 years imprisonment.

22. You were remanded for 3 months in this case therefore this period will be deducted as time already served by you, leaving you with a final sentence of 13 years 9 months imprisonment.
23. In calculating your non parole period, the Court will promote the sentencing principle of deterrence over the principle of rehabilitation. The deterrence is both personally for you and generally for any like-minded offenders or offenders in a similar situation to you
24. Uraia Kolomavu for the 10 counts of Rape on the Amended Information before the Court, you are sentenced to an aggregate sentence of 13 years 9 months imprisonment, and you will serve 11 years 9 months before you can be eligible for parole.
25. In addition I issue a permanent Domestic Violence Restraining Order – Standard Non Molestation Conditions for the protection of the victim.

Uraia Kolomavu this is your sentence:

- 1. For the 10 counts of Rape, your aggregate sentence is 13 years 9 months imprisonment, the non-parole period is 11 years 9 months.**
- 2. I issue a permanent Domestic Violence Restraining Order (DVRO), Standard Non-Molestation Conditions for the protection of the victim. Be advised that if you breach the conditions of this Order you will subject to further prosecution.**

30 days to appeal



A handwritten signature in black ink, appearing to be "U. Ratuveli", written over a horizontal dashed line.

Mr. Justice U. Ratuveli
Puisne Judge

At Suva
This 8th day of November 2024

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

