

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO HAC 192 OF 2020**

**STATE**

**V**

**VILITATI NAVAU**

Counsel : Ms B. Navunicagi with Ms E. Cabemaiwai for State  
Mr A. Barinisavu with Ms K. Vulimainadave for Defence

Date of Judgment: 11 November 2024

Sentence Hearing: 20 November 2024

Date of Sentence: 29 November 2024

(The name of the Complainant is suppressed. She is referred to as MT)

**SENTENCE**

1. Mr Vilitati Navau, you were convicted after trial of the following counts in the information filed by the Director of Public Prosecutions:

Count One

Statement of Offence

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

Particulars of the Offence

VILITATI NAVAU, between the 27th of October 2020 and the 28th of October 2020, at Lovu, Lautoka in the Western Division, unlawfully and indecently assaulted MT by kissing her.

Count Two

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) of the Crimes Act 2009.

Particulars of Offence

VILITATI NAVAU, between the 27th of October 2020 and the 28th of October 2020, at Lovu, Lautoka in the Western Division, unlawfully and indecently assaulted MT by licking her vagina.

Count Three

Statement of Offence

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

Particulars of Offence

VILITATI NAVAU, between the 27th of October 2020 and the 28th of October 2020, at Lovu, Lautoka in the Western Division, on an occasion different from count one, unlawfully and indecently assaulted MT by kissing her.

Count Four

Statement of Offence

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

Particulars of Offence

VILITATI NAVAU, between the 27th of October 2020 and the 28th of October 2020, at Lovu, Lautoka in the Western Division, had carnal knowledge of MT

Count Five

Statement of Offence

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

Particulars of Offence

VILITATI NAVAU, between the 27th of October 2020 and the 28th of October 2020, at Lovu, Lautoka in the Western Division, penetrated the vagina of MT with one of his fingers, without her consent.

2. You pleaded not guilty to all charges. At the ensuing trial, The Prosecution presented the evidence of the Complainant and another witness and closed its case. At the end of the Prosecution's case, the Court found no evidence to maintain the fourth count, which alleged that you had carnal knowledge of the Complainant. Therefore, you were acquitted of Rape on count four as charged. However, at the end of the trial, the Court was satisfied that you committed the offence of Attempt to Commit Rape contrary to Section 208 of the Crimes Act. The Court found you guilty on counts one, two, three and five as charged in the information and Attempt to Commit Rape on amended count four. You are convicted accordingly. Now you come before this Court for sentence.
3. You are a Pastor of Oneness Revival Pentecostal Church at Vunitogoloa in Rakiraki. MT (the victim), who is your niece, had come for a short stay at your place in Vunitogoloa to attend a church service. She was a 15-year-old child at the time. You managed to convince her to stay longer at your house. On 27 October 2020, she was home with you, helping you do the laundry because your wife had gone to school with your son. When the victim was cleaning your room, you entered and closed the door. You hugged and kissed her and told her to take off her clothes. You started kissing her from the side of her face, going down in motion. You stopped it because somebody had come outside. You told her not to tell anybody what had happened, and if she did, you would do something to her. She was really scared.
4. After this incident, she wanted to go to her sister in Ba. You gave her only \$3 for bus fare, enough only to go to Tavua, and told her to wait there until you picked her up. Later in the evening, you came in your seven-seater van and picked her up. You drove her straight to Lautoka without taking her to her sister in Ba under the guise that you had to get your vehicle fixed by a mechanic. You parked the van near the mechanic's house and started drinking beer with the mechanic. You closed both doors and made her sit on the side of the van. While you were still drinking, she fell asleep inside the van. When she was sleeping, you came on top of her and got hold of both of her hands. You started kissing her mouth and neck, going downwards and started licking her vagina. You then inserted your fingers into her vagina while she was trying to stop you. Finally, you tried to insert your penis inside her vagina.

She managed to kick your penis to prevent you from inserting your penis inside her vagina. You were drunk and knocked out right there. She ran out of the vehicle and escaped, leaving her underwear in the van.

5. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years imprisonment<sup>1</sup>. The maximum sentence for the offence of Indecent Assault is five years imprisonment. The tariff is set between 12 months and 4 years imprisonment if there is violence<sup>2</sup>. The maximum sentence for Sexual Assault is ten years imprisonment<sup>3</sup>. The tariff prescribed ranges from 2 years to 8 years imprisonment<sup>4</sup>. The top range is reserved for blatant manipulation of the naked genitalia or anus. A contact with the genitalia of the victim by the offender using part of his body other than the genitalia or an object falls into Category 2 of the Laca sentencing tariff. The Maximum Sentence for Attempt to Commit Rape is ten years imprisonment. The tariff is set between 12 months and 5 years imprisonment.<sup>5</sup> This tariff was set under the Penal Code when 7 years imprisonment was the maximum.
6. In selecting the sentence best suited to you, I must regard the proportionality principle enshrined in the Constitution and the Sentencing and the Penalties Act 2009 (SPA). I would also regard Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victim, I would select the starting point. The final sentence will be arrived at after making just adjustments for the aggravating and mitigating factors.
7. The courts in Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on the Rights of the Child,

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<sup>1</sup> Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)]

<sup>2</sup> Ratu Penioni Rokota v State (2002) FJHC 168

<sup>3</sup> Section 210(1) of the Crimes Act

<sup>4</sup> State v Abdul Khaiyum (2012) FJHC 1274 (10 August 2012); State v Laca (2012) FJHC 1414 (14 November 2012)

<sup>5</sup> Aunima v The State (2001) FJHC 105 (27 June 2001); Bulimaiwai v The State (2005) FJHC 216 (2 September 2005)

to which Fiji is a party, and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children expect elders and relatives in a domestic setting to care for and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.

8. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. This Court must see that the sentences operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes in the future. This sentence will make it clear to you and others with similar impulses that if anyone commits these crimes, they will meet with severe punishments.
9. You have committed a series of offences of similar character. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for offences.
10. Considering the seriousness of the offences, the harm caused to the victim and the number of offences, I select a starting point of 12 years from the lower range of the tariff.
11. With the help of the submissions filed by your Counsel and the sentencing submission by the State, I identified the following aggravating and mitigation factors of your offence:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 49 years of age, whereas your victim was 15 years at the time of the offence. There is an age gap of 34 years.

- (b). You exploited the vulnerability of a child who is in a domestic relationship. Given that she is an orphan who lost both her parents, you owed a duty of care as her uncle.
- (c). You warned the victim not to tell anyone about the incident and prevented her from complaining to anyone.
- (d). As a Pastor, you command respect and earn trust from your community. You breached that trust and let your religion down.
- (e). There was some degree of pre-planning when you took the victim to Lautoka on a false pretence.
- (f) You committed this offence under the influence of alcohol.

Mitigating Factors:

- (a). In mitigation, your counsel informed the Court that you are a 53-year-old Pastor attached to the church in your village. You are the sole breadwinner of your family, looking after your child and wife whose one hand got amputated after an accident. Personal circumstances, however, are of little mitigatory value.
- (b). According to the Record of Previous Convictions filed by the State, you have nil previous convictions. You have maintained a good character thus far and led an exemplary life supporting your community, giving leadership to the believers of your denomination. Since you have committed these offences by breaching the trust, you should earn very little for your good character.

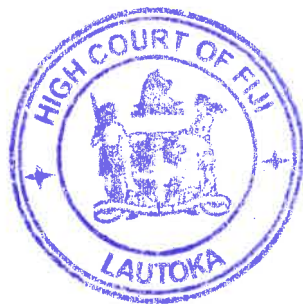
12. I add 04 years and one month to the starting point of 12 years for the above-mentioned list of aggravating factors to arrive at an interim sentence of 16 years and one month imprisonment. I reduce 2 years for mitigating factors to arrive at an aggregate sentence of 14 years and one-month imprisonment.

13. According to the State, you had been in remand roughly for one month. I considered the remand period as part of your sentence already served and is deducted from your sentence to arrive at a final aggregate sentence of 14 years imprisonment.
14. You are a first offender. The character references show that you have served the public wholeheartedly as a religious worker. Considering your potential for rehabilitation as a community leader and the gravity and impact of the offence on society, I impose a non-parole period of 12 years.

15. Summary

Mr. Vilitati Navau, you are sentenced to an aggregate imprisonment term of 14 years for all five offences you committed with a non-parole period of 12 years. You are eligible for parole when you have served 12 years in the correction facility.

16. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge  
Judge

29 November 2024

Solicitors  
Officer of Director of Public Prosecutions for State  
Legal Aid Commission for Defence