

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 283 of 2022

STATE

-v-

LAISIASA VAKALOLOMA

Counsel : Ms. Fatiaki, Juleen for State
: Ms. Singh, Manisha and Ms. Matanatabu, Ana for the Accused

Date of Sentence : 11th October, 2024

SENTENCE

1. The name of the child victim is suppressed here and will be referred to as “R.A.C”.
2. On 26th September, 2023, Mr. **LAISIASA VAKALOLOMA** pleaded guilty to the following counts in the presence of his Counsel;

COUNT 1

REPRESENTATIVE COUNT

Statement of Offence

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

Particulars of Offence

LAISIASA VAKALOLOMA, between the 1st day of September, 2017 and the 31st day of December, 2017, at Cunningham in the Central Division, unlawfully and indecently assaulted **R.A.C** by touching her breasts.

COUNT 2

(REPRESENTATIVE COUNT)

Statement of Offence

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

Particulars of Offence

LAISIASA VAKALOLOMA between the 1st day of January 2019 and the 31st day of December 2019, at Cunningham in the Central Division, unlawfully and indecently assaulted **R.A.C** by touching her breasts and buttocks.

COUNT 5

(REPRESENTATIVE COUNT)

Statement of Offence

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

Particulars of Offence

LAISIASA VAKALOLOMA between the 15th day of January 2020 and the 31st day of December 2020, at Cunningham in the Central Division, unlawfully and indecently assaulted **R.A.C** by touching her back and buttocks.

COUNT 7

Statement of Offence

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

Particulars of Offence

LAISIASA VAKALOLOMA on the same occasion as in Count 6, unlawfully and indecently assaulted **R.A.C** by licking her thighs.

COUNT 8

Statement of Offence

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

Particulars of Offence

LAISIASA VAKALOLOMA on the 28th day of February 2022, at Cunningham in the Central Division, unlawfully and indecently assaulted **R.A.C** by touching her buttocks.

3. However, he pleaded not guilty to the offence of Rape as per counts number 3, 4, 6 and 9.
4. The summary of facts for the above counts 1, 2, 5, 7 and 8 were read to the Accused and after confirming that he understood the facts he admitted same. The facts revealed that the Complainant in this matter is **R.A.C** (PW1) and she is currently 18 years of age. She was born on the 27th of February 2006. (A copy of her Birth Certificate is annexed as Annexure 1).
5. The Accused is Laisiasa Vakaloloma and he is currently 47 years of age, and prior to being remanded he was employed as a Marine Engineer.
6. The Complainant is the Accused's biological daughter and at the time of the offending they lived together under the same roof and shared the same bedroom along with the other members of their nuclear family including the Accused's wife and their three sons.
7. The Complainant is the eldest of the Accused children.

COUNT 1 [REPRESENTATIVE COUNT]

8. The first of these incidents began around the end of the third term of school in 2017 that is between the 1st day of September, 2017 and the 31st day of December, 2017.
9. It was during the above time, PW1 would be asleep in the bedroom when she was awoken by someone touching her back. PW1 then felt this person's hand begin touching her breasts however she merely assumed that she had been dreaming until it happened again to her a week later. A week later, PW1 was asleep when she was again awoken by the fact that someone's hand was inside her clothes and touching and squeezing her breasts. PW1 then turned to her right side and with the aid of the light in the room, saw that it was the Accused.
10. PW1 was shocked by this after recognizing that it was the Accused who was touching her. PW1 couldn't believe that it was the Accused as he was a person whom she trusted. The next day, the Accused pretended as if nothing had happened.
11. PW1 further stated that this was just the beginning of countless nights thereafter where the Accused would not only be touching her breasts but her buttocks as well. According to PW1 these indecent sexual acts would be repeated or done to her on a weekly basis when the Accused would be at home.

COUNT 2 [REPRESENTATIVE COUNT]

12. Between the 1st day of January, 2019 and the 31st day of December, 2019, PW1 and her family had resided with her family at her mother's family home.
13. As she would be asleep in the room, PW1 would be awoken by the Accused touches. The Accused would begin touching PW1's back, then he would squeeze her breasts before he began to touch and rub her buttocks with oil. At times, before touching PW1's buttocks the Accused would also take off PW1's pants before doing so. When PW1 would attempt to move away from him, the Accused would often slap her before going back to bed.
14. The Accused would often repeat the above at night during the above mentioned time period.

COUNT 5 [REPRESENTATIVE COUNT]

15. Between the 1st day of January, 2020 and the 31st day of December, 2020, PW1 was attending Year 9 at Suva Muslim wherein she and her family were staying at her uncle Metui's house. The said house had two bedrooms, one of which was occupied by PW1 and her family.
16. Often on Fridays, PW1 would be asleep when she would then be awoken again by the Accused touches. The Accused would begin touching her back and then he would massage her buttocks.
17. The Accused would only stop when PW1 would begin to cry or when her mother would return from work at night. The above was repeated on PW1 and PW1 would not inform her mother of the same for fear that it would cause her parents separation.

COUNT 7

18. On an unknown date between the 1st day of January, 2021 and the 31st day of December, 2021, the Accused had been consuming yaqona with his wife and PW1's family members when PW1 had gone to sleep.
19. Whilst sleeping on her stomach, PW1 woke up to the feeling of someone touching her. She opened her eyes and with the aid of the light, noticed her mother sleeping nearby while the Accused was behind her. She noticed that by this time, the Accused was masturbating with what she could smell was coconut oil. After a while, PW1 felt the Accused's licking her left thigh with his tongue.
20. PW1 felt so disgusted and she moved to try and make him stop what he was doing to her. The Accused however, continued licking her thigh until PW1 began to cry. PW1 assumed her mother might have heard her as she moved in her sleep and that was when the Accused quickly put his pants back on before going back to sleep beside PW1's mother.

COUNT 8

21. Sometime on the 28th day of February, 2022, PW1 went off to sleep beside her mother and was fast asleep before being awakened by someone touching her. The Accused was touching her buttocks before going back to sleep.

Recent Complaint

22. The above incidents continued from 2017 right through to the February, 2022 as detailed in Counts 1, 2, 5, 7 and 8 above.
23. On the 8th day of March, 2022, the complainant finally confided in her best friend Amelia who then encouraged her to impart the same to their teacher Ms. Lusiana Turner. After it was relayed to her teacher and then her principal in the presence of her mother, the matter was then reported to the police.
24. Thereafter, the accused was arrested and caution interviewed where he admitted to the allegations regarding the above sexual assaults when put to him during his interview ("Copy of the Caution Interview attached").
25. The trial for Counts 3, 4, 6 and 9 commenced on 20th May, 2024. After the complainant [RAC] provided sworn evidence in court, the Prosecution made an application to have the trial adjourned to 21st May, 2024 for them to reconsider their case.
26. On 21st May, 2024 the Prosecution made an application to file an amended Information pursuant to section 182 of the Criminal Procedure Act, 2009. The Prosecution amended counts 3, 4 and 6 as follows. Count 9 was omitted and the above counts 1, 2, 5, 7 and 8 though in the amended Information but remains the same;

COUNT 3

(REPRESENTATIVE COUNT)

Statement of Offence

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

Particulars of Offence

LAIASIA VAKALOLOMA between the 1st day of January 2019 and the 31st day of December 2019, at Cunningham in the Central Division, unlawfully and indecently assaulted **R.A.C** by rubbing her anus.

COUNT 4

Statement of Offence

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

Particulars of Offence

LAIASIA VAKALOLOMA on an unknown date between the 1st day of January 2020 and the 31st day of December 2020, at Cunningham in the Central Division, unlawfully and indecently assaulted **R.A.C** by rubbing her anus.

COUNT 6

Statement of Offence

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

Particulars of Offence

LAIASIA VAKALOLOMA on an unknown date between the 1st day of January 2021 and the 31st day of January 2021 at Cunningham in the Central Division, unlawfully and indecently assaulted **RAC** by rubbing her anus.

27. The above amended charges were read to the Accused and he pleaded guilty on his own accord to the said charges.

Facts for Counts 3, 4 and 6

28. The Accused also admitted to the following facts:-

Count 3 (Representative Count)

29. Between the 1st day of January 2019 and the 31st day of December 2019, the complainant was 13 years of age and was in Class 8. She resided at her grandmother's house in Cunningham along with her nuclear family members.
30. On an occasion between the said dates, the complainant was sleeping in the bedroom when she awoke to the Accused, who had removed her pants and panty and was rubbing her anus with his fingers.
31. Her other family members were asleep in the living room at the time.

Count 4

32. On an unknown date between the 1st day of January 2020 and the 31st day of December 2020, the complainant was 14 years of age and was in Form 3. She resided at her Uncle's house in Cunningham along with her nuclear family members.

33. On an occasion between the said dates, the complainant was sleeping in the bedroom when she awoke to the Accused, who had removed her pants and panty and was rubbing her anus with his fingers.
34. Her younger brothers were asleep next to her on the mattress which they shared, whilst her mother was not home.

Count 6

35. On an unknown date between the 1st day of January 2021 and the 31st day of January 2021, the complainant was 15 years of age and was in Form 4. She resided at her uncle's house in Cunningham along with her nuclear family members.
36. On an occasion between the said dates, the complainant was sleeping in the bedroom when she awoke to the Accused, who had removed her pants and panty and was rubbing her anus using oil with his thumb.
37. After he had finished the Accused then pulled up her pants and kissed her on her head and went back to sleep.

Recent Complaint

38. On the 8th of March 2022, the complainant informed her best friend Amelia at school as to what the Accused had been doing to her. They then informed their school teachers, and this led to the matter being reported to the police.

Investigations

39. Investigations ensued and the Accused was subsequently arrested and interviewed under caution and produced in Court.

Conviction

40. The Court is aware that the Accused understands the implication of his plea and finds him guilty accordingly. The Accused is convicted for eight (8) counts of Sexual Assault as per section 210(1)(a) of the Crimes Act, 2009.

Previous Criminal Record

41. The Accused is considered as a first offender.

Law and Tariff

42. Offence of "Sexual Assault" carried a maximum sentence of 10 years' imprisonment.
43. There is no established tariff for Sexual Assault committed on children. *State v Epeli Ratabacaca Laca*, HAC 252 of 2011, Justice Paul Madigan set the tariff for the offence between 2 and 8 years' imprisonment, the higher tariff being set for serious sexual assaults.
44. As defined in the United Kingdom's Legal Guidelines for Sexual offences, sexual assault is any form of non-consensual touching which ranges offending from touching of the victim over clothing to non-penetrative touching of the victim's genitals.

45. With the assistance of the said Legal Guidelines for Sentencing in the United Kingdom, Justice Madigan in the case of *State v Laca* [2012] FJHC 1414; HAC 252.2011, 14 November 2012) divided Sexual Assault offending into three (3) categories.

Category 1 (the most serious)

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 with the 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; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)

46. The Accused used his hand to touch the victim's breasts, back and buttocks. He used his fingers to rub her anus. Accused also used his tongue to lick the victim's thighs. His actions fall within category 3 as mentioned above.
47. The Sentencing Guidelines of the United Kingdom had identified 3 "categories" of offending based on quantum of "harm" to the victim and "culpability" factors of the offender. It has recommended the tariff to be from "high level community Orders to 9 years imprisonment." The higher end of the range is obviously for serious offending with use of violence, abduction or detention of the victim and forced entry into victim's house. A sentence of middle range is recommended when the offending takes place with touching of genitalia, prolonged or sustained incident, additional degradation or humiliation and in a context of habitual sexual abuse. The lower range of sentencing is suggested when the "harm factors" and the "culpability factors" identified are not in existence.

Sentencing Guidelines

48. Before sentencing the Accused, this court has considered sections 4(1), 4(2) and 4(3) of the Sentencing and Penalties Act, 2009.

Sentence

49. This court has also considered the aggravating factors in this case such as the physical, emotional and mental distress the Accused actions has impacted on the victim. It has also considered the duration of time that the Accused has preyed on the victim and the fact that this is a serious breach of trust case.
50. There are no mitigating factors in your favour. However, since you have pleaded guilty in the first instance for the charges of Sexual Assault, I sentence you to 4 years imprisonment for each count of Sexual Assault under Section 210 (1)(a) of the Crimes Act, 2009

51. In considering the aforesaid, the sentences are as follows;

Count 1 – Sexual Assault - 04 years imprisonment

Count 2 – Sexual Assault - 04 years imprisonment

Count 3 – Sexual Assault - 04 years imprisonment

Count 4 – Sexual Assault - 04 years imprisonment

Count 5 – Sexual Assault - 04 years imprisonment

Count 6 – Sexual Assault - 04 years imprisonment

Count 7 – Sexual Assault - 04 years imprisonment

Count 8 – Sexual Assault - 04 years imprisonment

52. **LAISIASA VAKALOLOMA**, you are sentenced to a custodial term of 04 years imprisonment.

53. I order that all these eight sentences of imprisonment to run concurrently.

54. 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.”

55. You have been in remand for this case since 15th August, 2022. Accordingly, you have been in custody for 2 years and 2 months. The period you were in custody shall be deemed as period of imprisonment already served by you in accordance with Section 24 of the Sentencing and Penalties Act.

56. Accordingly, I order that you, **LAISIASA VAKALOLOMA** serve a **custodial term of 1 year and 10 months** imprisonment. Pursuant to Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you have served 11 months of this sentence.

Appeal Period

57. You have 30 days to appeal to the Court of Appeal if you so wish.


Waleen M George
Acting Puisne Judge



Dated at Suva this 11th day of October, 2024.

**Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for the Accused**