

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

CRIMINAL CASE NO: HAC 140 OF 2022

STATE

-v-

VINOD KUMAR

Counsel	:	Ms P. Mishra for State
	:	Mr. S Kumar for Accused – Prosecution case
	:	Mr. Khan, I for Accused – Defence Case
	:	Accused In Person - Sentencing
Date of trial	:	3 rd April 2024, 4 th April 2024 and 24 th July, 2024
Date of Submission	:	30 th July, 2024 and 22 nd August, 2024
Date of Judgment	:	17 th March, 2025
Date of Submission (Mitigation & Sentencing):	:	31 st March 2025 & 14 th April, 2025
Date of Sentence	:	21 st May 2025

SENTENCE

1. The complainant's name has been suppressed as per Court Order and she will be referred to as "AKK".
2. After a full trial, the Court finds you, **Vinod Kumar** guilty and convicts you of one count of **Rape** contrary to **section 207(1) and (2)(a) and (3) of the Crimes Act 2009**, one count of **Rape** contrary to **section 207(1) and (2) (b) and (3) of the Crimes Act 2009** and one count of **Sexual Assault** contrary to **section 210 (1) (a) of the Crimes Act 2009**.
3. During the trial it was revealed that between 1st day of January 2022 and the 1st day of April 2022, at Duilomaloma Road, Waila, Vinod Kumar had carnal knowledge of AKK, a child under the age of 13 years. Than on the second occasion, during the same time period, you penetrated the vagina of **AKK**, a child under the age of 13 years, with your fingers. On the third count, you unlawfully and indecently assaulted **AKK**, by touching her breasts and kissing her lips.

4. The complainant is your step daughter whom you raised from the time she was 10 days old.

Sentencing Guidelines

5. Before sentencing you, the court has considered **sections 4(1), 4(2) and 4(3)** of the **Sentencing and Penalties Act, 2009**. These sections provides factors that the sentencing court should consider before sentencing you.

Law

6. The maximum penalty for rape is life imprisonment.
7. The offence of Sexual Assault carries a maximum penalty of 10 years imprisonment.

Tariff

Counts 1 and 2 - Rape

8. A new tariff has now been set for child rape in the Supreme Court of Fiji decision in **Aitcheson v State [2018] FJSC 29; CAV 0012.2018** (2 November 2018) whereby in paragraph 25, the Court held that:

"The tariff previously set in Raj v State [2014] FJSC 12; CAV 03 of 2014 (20 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".

9. In the High Court of Fiji in **State v Tikodramai - Sentence [2023] FJHC 185; HAC17.2021** (30 March 2023) stated;

[27] In determining the starting point within the said tariff the Court of Appeal, in Laisiasa Koroivuki 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."

Count 3 – Sexual Assault

10. There is no established tariff for Sexual Assault committed on children. In **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.

11. 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.
12. 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; HAC252.2011 (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)

13. You touched the victim's breasts and kissed her lips. Your actions fall within category 3 as mentioned above.
14. 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.

Starting Point

15. In considering the sentencing guidelines and the seriousness of the offence of rape, I select a starting point of 13 years imprisonment.

Aggravating Factors

16. These are the aggravating factors;
- (i) You are the complainant's step-father and the only one she has known as a "papa" since you raised her when she was only 10 days old. You should have protected her but instead you breached that trust. This is a serious breach of trust case.
 - (ii) There was a great disparity in age between you and the complainant. At the time of the offending, you were 43 years old and the complainant was 11 years old. You were in a position of power and authority and you used that to your advantage.
 - (iii) You exposed the complainant to sexual activity at quite a young age, robbing her of her innocence.
 - (iv) The complainant endured your sexual abuse for a prolonged period of 4 months (from January to April, 2022).
 - (v) As per the complainant's 'Victim's Impact Statement' dated 4th April, 2024, the crime you committed on her, left her traumatized. She has lost interest in her studies and socializing with others including her friends and family members. She further states that she used to be proud of her chastity but now that she had lost it, she is extremely depressed.
 - (vi) Your actions were pre-meditated. You would sexually abuse and rape the complainant at night when her biological mother would be away from home doing night shift.
17. Based on the above factors, I enhance your sentence by 4 years and arrive at 17 years imprisonment.

Mitigating Factors

18. You are a first offender. You are the sole breadwinner for your elderly parents who are 71 and 70 years old. As a father, you state that you are shameful for the actions you have been blamed of.
19. In considering your mitigating factors, I reduce 1 year from your sentence and arrive at 16 years imprisonment.

Sentence for Counts 1 and 2 - Rape

20. **Vinod Kumar**, your sentence is now 16 years imprisonment for Count 1 which is Rape.

21. I repeat the same process for Count 2 – Rape and your sentence is 16 years imprisonment.

Sentence for Count 3 - Sexual Assault

22. In this case, your offending falls under category 3. You touched the complainant's breasts and kissed her lips. In considering the above sentencing guidelines, and the objective seriousness of the offence, I select a starting point of 2 years imprisonment.
23. In considering the aggravating factors, I increase your sentence by 2 years and arrive at 4 years imprisonment.
24. For your mitigating factors, I decrease 1 year and arrive at 3 years imprisonment.

Summary of Sentence

25. Your sentences are as follows;

Count 1 – Rape contrary to section 207(1) and (2)(a) and (3) of the Crimes Act, 2009 – 16 years imprisonment.

Count 2 – Rape contrary to section 207(1) and 2(b) and (3) of the Crimes Act, 2009 – 16 years imprisonment.

Count 3 – Sexual Assault contrary to section 210(1)(a) of the Crimes Act, 2009 – 3 years imprisonment.

26. I order that all your three sentences to be served concurrently, Therefore, your head sentence is 16 years imprisonment.

Time Spend in Custody

27. You were remanded by the High Court from First Call, 26th April, 2022 and granted bail on 26th July, 2022 (a total of 3 months). On 4th July, 2024 on the application of the State, your bail was revoked and you were again remanded in custody until to date, 21st May, 2025 (a total of 10 months and 17 days). So in total, you have been in custody for almost 14 months or 1 year and 2 months.
28. **Section 24** of the **Sentencing and Penalties Act, 2009**, the court is obliged to deduct the period of remand from your sentence. The court will deduct 1 year and 2 months from your head sentence of 16 years.

Final Sentence

29. Your final custodial term of imprisonment is 14 years and 10 months.

Non-parole Period

30. In considering **section 18(1)** of the **Sentencing and Penalties Act, 2009**, I fix your term of **non-parole to 12 years and 10 months imprisonment**.

31. In the result, you are sentenced to a term of imprisonment for 16 years with a non-parole period of 12 years and 11 months. However, in considering the time you have served in remand, the time remaining to be served is as follows;

Head Sentence – 14 years and 10 months

Non – Parole period - 12 years and 10 months

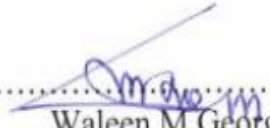
Permanent Domestic Violence Restraining Order

32. Furthermore, since you are in a domestic relationship with the complainant, I issue a Permanent Domestic Violence Restraining Order pursuant to **section 27** of the **Domestic Violence Act, 2009** which is Standard Non Molestation Conditions.

Appeal Period

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




Waleen M George
Acting Puisne Judge
HIGH COURT OF FIJI

At Suva this 21st day of May, 2025.

Solicitors for the State: Office of the Director of Public Prosecutions, Suva
Accused in Person