

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 287 of 2016

[CRIMINAL JURISDICTION]

STATE

V

MAVENI LUI

Counsel : Ms. S. Serukai for State  
Mr. L. Qetaki for Accused

Date of Sentence : 24<sup>th</sup> November 2016

SENTENCE

1. Maveni Lui, you stand convicted of the following offences upon pleading guilty;

FIRST COUNT

**Representative Count**

*Statement of offence*

**SEXUAL ASSAULT:** Contrary to section 210(1) (a) and 2 of the Crimes Decree No. 44 of 2009.

*Particulars of offence*

**MAVENI LUI** between the 8<sup>th</sup> day of April to the 11<sup>th</sup> of April, 2015 at Wainibokasi Hospital Quarters Settlement, Nausori in the Central Division, unlawfully and indecently assaulted Analisa Serebau, by touching her buttocks and fondling her vagina with his hand.

SECOND COUNT

**Representative Count**

*Statement of offence*

**SEXUAL ASSAULT:** Contrary to section 210(1) (a) and 2 of the Crimes Decree No. 44 of 2009.

*Particulars of offence*

MAVENI LUI between the 8<sup>th</sup> day of April to the 11<sup>th</sup> of April, 2015 at Wainibokasi Hospital Quarters Settlement, Nausori in the Central Division, unlawfully and indecently assaulted Analisa Serebau, by rubbing her buttocks with his hand.

**THIRD COUNT**

**Representative Count**

*Statement of offence*

**SEXUAL ASSAULT:** Contrary to section 210(1) (a) and 2 of the Crimes Decree No. 44 of 2009.

*Particulars of offence*

MAVENI LUI between the 8<sup>th</sup> day of April to the 11<sup>th</sup> of April, 2015 at Wainibokasi Hospital Quarters Settlement, Nausori in the Central Division, unlawfully and indecently assaulted Analisa Serebau, by touching and fondling her vagina with his hand.

**FOURTH COUNT**

**Representative Count**

*Statement of offence*

**SEXUAL ASSAULT:** Contrary to section 210(1) (a) and 2 of the Crimes Decree No. 44 of 2009.

*Particulars of offence*

MAVENI LUI between the 8<sup>th</sup> day of April to the 11<sup>th</sup> of April, 2015 at Wainibokasi Hospital Quarters Settlement, Nausori in the Central Division, unlawfully and indecently assaulted Analisa Serebau, by rubbing her buttocks with his hand.

2. The victim is distantly related to you. During the period between 8<sup>th</sup> and 11<sup>th</sup> April 2016, you have sexually assaulted her on four occasions. The victim was 9 years old and you were 64 years at the time of offending. It is noted in the summary of facts that;

*The first count occurred sometimes at night when the complainant was sleeping in the bedroom on a mattress. The accused entered the same room pretending to look for something. That was when he fondled her vagina with his hand and started rubbing her buttocks in the bedroom.*

*The second count occurred when the complainant was trying to light the gas stove but could not do so, because Maveni Lui came to her and started to rub her buttocks with his hand.*

*On the third occasion, the complainant was having her bath with her cousin, Sera who is a 1 year old child, when she saw Maveni Lui enter. As he entered the bathroom, he then touched and fondled her vagina.*

*On the fourth occasion, at about 10pm, on the 11<sup>th</sup> of April, 2016 the accused Maveni Lui was looking for sugar, as he entered the kitchen, he called the complainant to assist him. The accused then took off his sulu and rubbed his penis on the complainant's buttock.*

3. The offence of sexual assault under section 210(1) of the Crimes Decree carries a maximum sentence of 10 years imprisonment. Following the case of *State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012), this court has been applying an imprisonment term between 2 to 8 years as the tariff for sexual assault.
4. The four offences you are convicted of are offences of similar character. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Decree 2009 ("Sentencing and Penalties Decree"), I consider it

appropriate to impose an aggregate sentence of imprisonment for the four counts. Section 17 of the Sentencing and Penalties Decree reads thus;

*“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 may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

5. I take 5 years as the starting point of your aggregate sentence for the four offences.
6. I consider the following as aggravating factors;
  - a) you are an elderly relative of the victim. There was a breach of trust;
  - b) age difference between you and the victim is 55 years; and
  - c) you took advantage of the victims naivety and vulnerability.
7. I consider the following as your mitigating circumstances;
  - a) you pleaded guilty at the earliest possible opportunity;
  - b) you cooperated with the police and admitted your guilt when you were interviewed under caution;
  - c) you are a first offender; and
  - d) you are remorseful.
8. Considering the aforementioned aggravating factors, I add 05 years to the starting point. Now your sentence is 10 years imprisonment.
9. I deduct 4 years of your sentence considering the above mitigating factors except the early guilty plea.

10. Now your sentence is 06 years imprisonment. By pleading guilty at the earliest opportunity, you have saved this court's time and have prevented the young child victim from having to give evidence in court. I would therefore grant you a discount of 02 years which is equivalent to one-third of your sentence.
11. For the four counts of sexual assault, I hereby sentence you for a term of 04 years imprisonment. I order that you are not eligible to be released on parole until you serve 03 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.
12. Section 24 of the Sentencing and the Penalties Decree 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."*
13. I note that you have spent 07 months and 10 days in custody. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 08 months.
14. In the result, you are sentenced to 04 years imprisonment with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 03 years, and 04 months

Non-parole period - 02 years, and 04 months
15. Having considered the facts in this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim Analisa Serebau as the protected person. You are hereby ordered not to have any form of contact

with the victim directly or by any other means, unless otherwise directed by this Court.

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



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Legal Aid Commission, Suva.