

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO.: HAC 183 OF 2015**

STATE

-v-

VILIMONE BANUVE

Counsel : Ms. J. Niudamu for the State  
Ms. S. L. Jiuta & S. Nasedra for the Accused

Date of Sentence : 25<sup>th</sup> April, 2016

*(Name of the victim is suppressed. She is referred to as VR)*

**SENTENCE**

[1]. Mr. Vilimone Banuve (Accused) tendered an unequivocal 'plea of guilty' on 2<sup>nd</sup> of February, 2016 to the following counts when he was represented by a counsel.

**COUNT 1**

*Statement of Offence*

**RAPE:** Contrary to section 207(1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**VILIMONE BANUVE** between the 1<sup>st</sup> August 2015 and 31<sup>st</sup> of August 2015 at Rakiraki in the Western Division penetrated the vagina of VR, aged 8 years with his finger.

**COUNT 2**

*Statement of Offence*

**RAPE:** Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Decree 2009.

### *Particulars of Offence*

**VILIMONE BANUVE** on the 29<sup>th</sup> of September, 2015 at Rakiraki in the Western Division penetrated the vagina of VR, aged 8 years with his finger.

- [2]. Accused was explained the consequence of the guilty plea and the tariff range of the sentence. Having admitted the acts of penetration of victim's vagina with his fingers on two occasions, accused, at the outset, denied having committed the offence of Rape. He was at first confused that what he did actually constituted Rape. He thought it was sexual assault. His Counsel and the Court explained to him that the acts he had committed are no longer considered in Fiji as mere sexual assaults, but grave form of sexual assault called Rape. He understood the change that had taken place in the law over time and maintained his guilty plea. Court accepted his plea after being satisfied that it was unequivocal, voluntary and free from any influence.
- [3]. On the 23<sup>rd</sup> March 2016, Accused agreed the relevant summary of facts filed by the State. Court found that the two counts of Rape were proved on the facts agreed by the accused. He was convicted on both Rape counts accordingly. He now comes before this Court for sentence on the conviction.
- [4]. The summary of facts filed by the State was that:

#### *Count 1 – Rape between the 1<sup>st</sup> and 31<sup>st</sup> of August 2015*

*The complainant is one VR, 8 years and 9 months and a Class 3 student of Navolau District School in Rakiraki, Ra. At the time of the offence, the complainant was residing with her parents at Navolau NO. 2 Village, Rakiraki, Ra.*

*Sometimes between the 1<sup>st</sup> and the 31<sup>st</sup> of August 2015, the complainant was returning home from school when her mother sent her to get the voivoi stick from the accused, Vilimone Banuve, 72 years, farmer of Navolau No.2 Village in Rakiraki. The accused is a distant grandfather of the complainant.*

*The accused gave the complainant the voivoi stick and the complainant then gave it to her mother. The complainant then went outside to play when the accused called the complainant inside his house. Once the complainant is inside the accused house, the accused took the complainant to his bedroom and then pulled down the complainant's shorts and then the accused inserted one of his fingers into the complainant's vagina.*

*The complainant felt a lot of pain when the accused's finger was inside her vagina and told the accused to stop. The accused then stopped and the complainant wears her clothes and left.*

Second Count – Rape on 29<sup>th</sup> September 2015

*On 29<sup>th</sup> September 2015, the complainant returned from school and her parents were not at home. The complainant changed her clothes and went to the kitchen to boil water for tea. Whilst the complainant was boiling the tea, the accused came from behind the complainant and then pulled the complainant's shorts and then the accused inserted his finger inside the complainant's vagina. The complainant was in pain and told the accused to stop.*

*The matter was later reported to Rakiraki Police Station and the accused was arrested and interviewed under caution and he admitted inserting his finger inside the complainant's vagina on two different occasions.*

*The accused is a first offender.*

- [5]. The maximum penalty for Rape is life imprisonment.
- [6]. It is now well settled, and confirmed by the Supreme Court in Anand Abhay Raj CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment.
- [7]. Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders. In State v Tauvoli [2011] FJHC 216; HAC027.2011 (18 April 2011) Madigan J observed:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound”.*

- [8]. In State v Marawa [2004] FJHC 338; Justice Gates (as he then was) stated in paragraph 10:

*“rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”*

- [9]. In the case of Mohammed Kasim v State [1994] FJCA 25;AAU 0021j.93S (27 May 1994) it was stated that;

*“It must be recognized by the Courts that the crime of Rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must*



*stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point”.*

- [10]. Having considered the gravity of the offence, culpability of the offending and its impact on the child victim, I take a starting point of (12) years’ imprisonment for each Rape count.

### **Aggravating Circumstances**

- [11]. The Accused was a neighbor and distance grandfather of the victim. He breached the trust and exploited victim’s vulnerability.
- [12]. The age gap between them is more than sixty-five years. In principle, the younger the child and the greater the age gap between the offender and the victim, the higher the sentence should be.
- [13]. Raping a step daughter is no doubt a domestic violence under the Domestic Violence Decree.
- [14]. On both occasions, Accused committed the crime with some degree of pre planning.
- [15]. According to the Victim Impact Statement, victim has suffered physically and psychologically. Offending left a scar and trauma for the rest of her life.

### **Mitigating Circumstances**

- [16]. Accused cooperated with police. According to the mitigation submission, he is 72 years and married with children.
- [17]. He showed genuine remorse by admitting the offence to the police and pleaded guilty at the first available opportunity. He appeared greatly embarrassed for what he did. He requested that summary of acts be read to him in a closed court since *Turaga ni Koro* of his village was in attendance. He not only saved the court time and the resources but relieved the complainant from giving evidence.
- [18]. In *Taqa v State* [2009] FJCA 11; AAU0042.2007 (26 June 2009) it was observed:

*“Our second concern is the amount of credit given to the compelling mitigating factors present in this case. The appellant showed genuine remorse by admitting the offence to the police and by pleading guilty at the first reasonable opportunity. He not only saved the court time and the resources but relieved the complainant from giving evidence of sexual nature which would have been a distasteful experience for her. The appellant was a person of previous good character and came from a disadvantaged background. We*

*take the view that the discount of two years did not sufficiently account for these mitigating factors”....*

*...We bear in mind that different judges may give different weight to the mitigating factors and that this Court should be slow to intervene in a sentence on the ground of insufficient weight given by the sentencing court to the various mitigating factors, we nevertheless, are satisfied that this is a case where our intervention is justified. Rape cases pose an inherent difficulty in its prosecution because of the nature of evidence that the complainant has to recollect and testify. When an accused pleads guilty, substantial discount should be given for relieving the complainant from giving evidence of sexual nature”.*

[19]. Accused is a first offender. He has maintained a good character right throughout his life spanning 72 years. He should get a discount on his good character.

[20]. He humbly seeks forgiveness from Court, young victim and her family.

#### **Sentence**

[21]. I add three (3) years to the starting point for above mentioned aggravating factors bringing the interim sentence to fifteen (15) years’ imprisonment. I deduct five (5) years for his genuine remorse and early guilty plea bringing the sentence for each Rape count to ten (10) years’ imprisonment.

[22]. I consider that the advanced age of the accused is an exceptional circumstance that will permit me to deviate from the existing tariff. There are instances where Courts in Fiji, exercising sentencing discretion, have deviated from the existing tariff in recognition of special circumstances. Before I pass the final sentence I took his old age into consideration.

[23]. In the case of **Mohammed Kasim v State** [1994] FJCA 25; AAU 0021j.93S (27 May 1994) it was stated that;

*“We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point”.*

[24]. In **State v David Spowart** Criminal Case No. HAC 89 of 2011, 24 July 2013; Justice Madigan, passing a sentence of five years’ imprisonment on a 74 year old juvenile rape convict, stated:




*“Whereas for a very young offender the Court would make allowance in reduction of sentence, this Court believes that an additional allowance should be made for a very elderly offender. While not detracting from the seriousness of this crime, a normal sentence for this crime could see the accused end his days in prison. Despite his utterly shameful behavior he should still have the prospect of release from prison before his death, given that he has lived 74 years without a previous conviction. For the two years spent already in remand and as an act of mercy given his advanced age I further reduce the 8 year sentence to 5 years and that is the sentence that the accused will serve. He is to serve 4 years of that term before he is eligible for parole.(para:13)*

*“While the sentence is well outside the accepted range, or “tariff” for rapes of children it is not to be taken as authority to pull the tariff down. It is a truly exceptional sentence in the circumstances and is passed as an act of mercy on a 74 year old who has pleaded guilty, has already served two years and is very remorseful. (para: 14)*

- [25]. As an act of mercy for his advanced age, I give a further discount of two years bringing the final sentence to eight years’ imprisonment.
- [26]. Accused was in remand for a period of nearly five months. Thus a period of five (5) months is deducted from the sentence. **Now the final sentence for each Rape count is seven (07) years and seven (07) months’ imprisonment.**
- [27]. **Sentences to be served concurrently.**
- [28]. Having considered his age and Section 18(1) of the Sentencing and Penalties Decree, a **non- parole period of five (05) years is imposed.**
- [29]. 30 days to appeal to the Fiji Court of Appeal.



  
**Aruna Aluthge**  
**Judge**

At Lautoka  
25<sup>th</sup> April, 2016

Solicitors:

- Office of the Director of Public Prosecution for State
- Office of the Legal Aid Commission for Accused