

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 18 of 2017**

**STATE**

**V**

**JALE RAVULA**

**Counsel** : Ms. Amelia Vavadakua for the State  
Mr. Vilisoni Tuicolo with Ms. Manisha Singh for the Accused

**Dates of Trial** : 27-28 February 2018

**Summing Up** : 1 March 2018

**Judgment** : 1 March 2018

**Sentence** : 2 March 2018

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "LDU."*

**SENTENCE**

[1] Jale Ravula you have been found guilty and convicted of the following offence for which you were charged:

**COUNT 1**

***Statement of Offence***

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

### ***Particulars of Offence***

**JALE RAVULA**, on the 5<sup>th</sup> day of April 2017, at Nawaca Village in Bua, in the Northern Division, penetrated the vulva of **LDU**, a child under the age of 13 years, with his lips.

- [2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 2 days. The complainant, her mother (Tulia Rasoro), and a medical officer (Dr Talei Vasuitaukei) gave evidence for the prosecution. You gave evidence on your own behalf.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the charge of Rape. Having reviewed the evidence, this Court decided to accept the unanimous opinion of the Assessors and found you guilty and convicted you of the said charge.
- [4] It was proved during the trial that, on the 5 April 2017, you penetrated the vulva of the complainant, who was a child under the age of 13 years, with your lips.
- [5] You are a grandfather of the complainant. The complainant was only 5 years of age at the time you committed the above offence on her, and as such, she was a juvenile.
- [6] The complainant testified in Court that you had called her to your house, by waving at her. You had then taken her to your room, laid her down, taken out her clothes and then penetrated her vulva with your lips.
- [7] The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for life.
- [8] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

*"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."*

- [9] In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

*"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".*

- [10] His Lordship Justice Daniel Goundar, in the case of **State v. AV** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

*"...Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences".*

- [11] In the case of **State v. Tauvoli** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

*"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."*

- [12] In the case of **Anand Abhay Raj v. The State** [2014] FJSC 12; CAV 03 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

- [13] 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."*

- [14] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 10 years for the offence of Rape.

- [15] The aggravating factors are as follows:

- (i) The complainant considered you as a grandfather. The complainant refers to you as "Bu Jiale" meaning grand-father Jiale.
- (ii) Being like a grandfather you should have protected her. Instead you have breached the trust expected from you and the breach was gross.

- (iii) There was a large disparity in age between you and the complainant. The complainant was merely 5 years of age and you were 75 years of age, at the time of the offence. Therefore, there was a difference in age of 70 years.
- (iv) You took advantage of the complainant's vulnerability, helplessness and naivety.
- (v) You have exposed the innocent mind of a child to sexual activity at such a tender age.

[16] You are now 76 years of age and married. It was submitted on your behalf that your wife is suffering from paralysis for the past 9 years due to a stroke. You are a subsistence farmer. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

[17] It was submitted by the State that there was one previous conviction recorded against you in 1976, for being drunk and disorderly. There have been no previous convictions recorded against you over the past 40 years. Therefore, this Court considers you as a previous good character. It was also submitted on your behalf that you are now remorseful of your actions and you are seeking forgiveness of this Court.

[18] Considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 15 years. Considering your previous good character and the fact that you are remorseful of your actions, I deduct 3 years from your sentence. Your sentence is now 12 years.

[19] The next issue for consideration is whether this Court should grant you any concessions due to your advanced age. The Learned State Counsel and Counsel for the Defence made reference to *State v. Spowart* [2013] FJHC 352; HAC 89 of 2011 (24 July 2013) and *State v. Banuve* [2016] FJHC 320; HAC 183 of 2015 (25 April 2016).

[20] Having perused the said authorities, I am of the opinion that the said two cases must be distinguished from the present case. This is due to the fact that in both those cases the accused had entered a plea of guilt at the first available opportunity, thereby showing genuine remorse and, more importantly, relieving the complainants in the said cases from giving evidence in Court.

[21] Her Ladyship Madam Justice Nazhat Shameem in the case of *Rokota v. The State* [2002] FJHC 168; HAA 68 J of 2002S (23 August 2002) held as follows:

*"...However, the Appellant is 64 years old. There are special sentencing principles for the sentencing of the elderly, particularly those of previous good character."*

[22] Making reference to Principles of Sentencing (2<sup>nd</sup> Edition), by D. A. Thomas, Her Ladyship said:

*"Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly offenders, and the Court has upheld sentences of imprisonment on men in their seventies. It is however a long-established principle that a sentence should normally*

*be shortened so as to avoid the possibility that the offender will not live to be released."*

[23] However, considering all the facts and circumstances of this case, especially the fact that the victim herself was merely 5 years of age at the time of the incident, I am not inclined to reduce the primary sentence or head sentence I am imposing on you.

[24] Accordingly, I sentence you to a term of 12 years imprisonment.

[25] However, in determining the non-parole period to be imposed on you, I have given due consideration to your advanced age. Accordingly, pursuant to the provisions of Section 18 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act"), I fix your non-parole period as 8 years imprisonment.

[26] In doing so I have taken into consideration the judgement of the Court of Appeal in *Tora v. State* [2015] FJCA 20; AAU 63 of 2011 (27 February 2015), which was upheld by the Supreme Court in *Tora v. State* [2015] FJSC 23; CAV 11 of 2015 (22 October 2015).

[27] 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."*

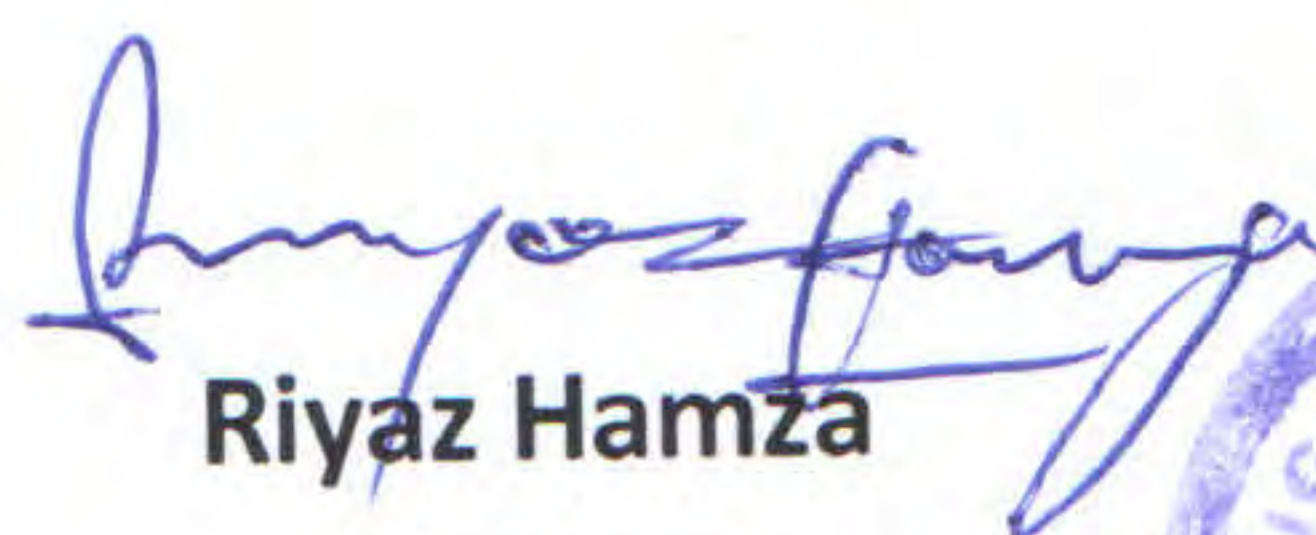
[28] You have been in custody for this case from 9 April 2017 to 21 April 2017. Accordingly, you have been in custody for 12 days. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of ½ a month should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

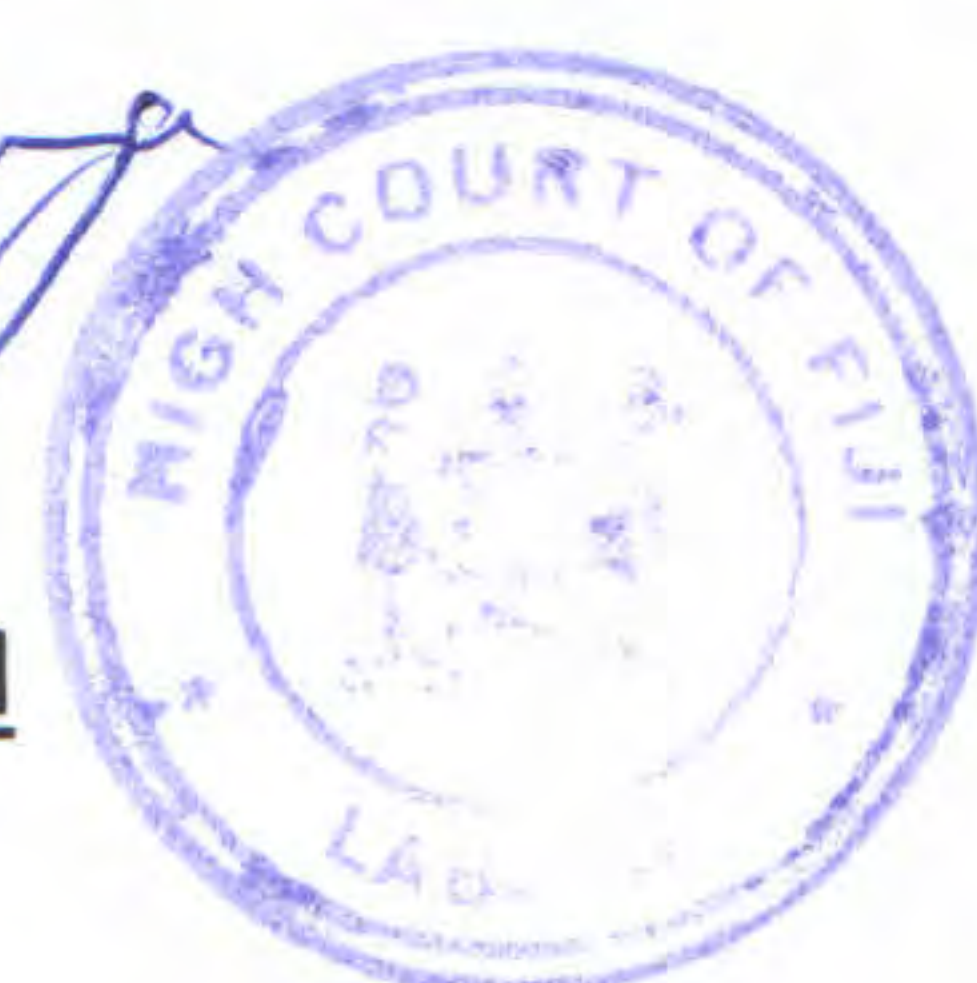
[29] In the result, you are sentenced to a term of imprisonment of 12 years with a non-parole period of 8 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 11 years and 11 ½ months.

Non-parole period - 7 years and 11 ½ months.

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

  
Riyaz Hamza  
**JUDGE**  
**HIGH COURT OF FIJI**



AT LABASA

Dated this 2<sup>nd</sup> Day of March 2018

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Labasa.**  
**Solicitors for the Accused** : **Office of the Legal Aid Commission, Labasa.**