

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

**CRIMINAL CASE NO. HAC 57 OF 2017**

**BETWEEN** : STATE

**AND** : LAWRENCE PRASAD

**Counsel** : Ms S Naibe for State  
: Ms K Vulimainadave for Accused

**Date of Hearing** : 17<sup>th</sup> – 19<sup>th</sup> July, 2019  
**Date of Summing Up** : 20<sup>th</sup> July, 2019  
**Date of Judgment** : 20<sup>th</sup> July, 2019  
**Date of Sentence** : 23<sup>rd</sup> August, 2019

**S E N T E N C E**

- [1] The Accused was charged with one count of indecent assault and five counts of rape of his adolescent step-daughter. Following a trial he was convicted of all six charges. I now pronounce sentence. I have a duty to explain the sentence to the Accused and the public.
- [2] The facts upon which I base my sentence are as follows.
- [3] The incidents arose in 2016 when the victim came to live with her biological mother at Naikabula, Lautoka from Ba. At the time her mother was in a living relationship with the Accused. They lived in a one bedroom rented house. The Accused was 24 years old at the time while his partner, the victim's mother was in her early thirties. She had another child with special needs from another relationship living with her at the time. The complainant at the time was 16 years old and a Form 4 student. Her parents separated when she was 4 years old. Her paternal grandmother raised her until she passed away and the complainant came to live with her mother after 11 years following a court order.

- [4] The abuse started in October 2016. It started with fondling of the victim's breasts and genitals at night time in the living room. The touching was fleeting but intentional. The initial reaction of the victim was that she felt bad that such a thing was being done by a person who she called 'papa', meaning father. The next morning she complained to her mother when the Accused left home for work. Her mother did not believe her and mocked her.
- [5] The victim went and complained to police after school. Her mother was called at the station. She convinced the police and a social welfare officer that the victim's character was questionable. The police did not register the victim's report. She was returned to her mother. When the victim returned home, her mother beat her up and subjected her to verbal abuse. The victim attempted suicide but was unsuccessful.
- [6] By December 2016 the sexual abuse turned into rape. The first rape occurred in the home on 6 December 2016. Other indecencies were committed on the victim before sexual intercourse. Force was used to push the victim to the ground and remove her undergarment. When she resisted, the Accused slapped her and pressed her mouth with his hand. He had sexual intercourse for about 5 minutes. In her evidence she described her experience as painful. Her genitals were sore. She bled. She said she was crying and told him to stop, but he did not listen. After he was done, he got up and went away. She remained on the floor for about 5 to 10 minutes before putting on her clothes. She did not complain to anyone. She did not feel she had a voice. She was not heard when she complained to her mother, police and a social welfare officer on the first occasion. She was left without a voice, giving the Accused power to carry out a campaign of rape.
- [7] Between a period of two months from December 2016 and January 2017, the Accused raped the complainant on five separate occasions in her home. The incident occurred either on the bed inside the Accused's bedroom or on the floor of the living room. She described the subsequent incidents as not as painful as the first one. On occasions he threatened her not to report the abuse.

- [8] On some occasions her younger brother who was a toddler at the time was within the vicinity of the incidents but he may not have been aware of what was happening to the victim.
- [9] By February 2017 the victim discovered that she was in an early stage of pregnancy after her mother took her to a local doctor. She said she was impregnated by the Accused. Her mother made her go through a non-intrusive procedure using prescription drug to terminate the pregnancy. That was done to protect and save the Accused from being exposed as the victim was still a child.
- [10] Shortly after the victim was forced to terminate her pregnancy, she was rescued from her home by her relatives, whom she referred to her as her aunty and uncle. Both the Accused and the complainant's mother physically and verbally abused the victim in the presence of the relatives who went to take her to their home. All her clothes were thrown out on the yard and she was told that she was dead for the family.
- [11] The victim did not only suffer physical trauma, she also suffered psychological trauma at the hands of the Accused. She contemplated suicide and even attempted one. The emotional trauma was obvious when she was not able to control her emotions when she gave evidence.
- [12] There is virtually no logical explanation for the Accused's conduct. His defence that the victim fabricated the sexual allegations to justify leaving his home for her lover was based on thin ground. The victim's evidence was that she was not in a relationship with anyone as suggested by the Accused. After she was displaced from her own home, she reported the incidents to Police, this time with the assistance of the family that took her to their home and gave her shelter, put her life together and went back to school to complete her studies.
- [13] The Accused is now 26 years old and continuing with his relationship with the complainant's mother. He used to work as a mechanic for a local private company until he was remanded in custody in this case. He is the youngest of three siblings. His father has passed away and his

widowed mother is residing with his elder brother. He left studies after Form 6 and started working. This is his first criminal conviction. Of all these, the only significant mitigating factor is the Accused's previous good character.

[14] I must have regard to both the objective seriousness of the offence and the seriousness of the actual conduct of the Accused. The maximum punishment that this Court can impose for rape is life imprisonment. The maximum penalty prescribed for indecent assault is 5 years' imprisonment. For the tariffs, I am guided by the decisions in *Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014); *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018); and *Rokota v The State* [2002] FJHC 168; HAA0068J.2002S (23 August 2002)). The offences were committed on a child by a family member in her home. The offences are objectively serious.

[15] The conduct of touching the genitals of an adolescent girl and then having sexual intercourse with her without her consent and knowing she did not consent is equally serious. There are significant aggravating factors in this case. They in summary are:

1. The victim was vulnerable due to being a juvenile girl who came to live with her mother after 11 years following the passing away of her guardian, her paternal grandmother.
2. The victim was sexually abused in the security of her home by a close family member.
3. The victim's trust was breached by the Accused who was her stepfather and guardian.
4. A spate of sexual abuse was committed on the victim over a span of four months.
5. Physical violence was used on some occasions.
6. Threats were made not to report the abuse.
7. The victim was impregnated and then forced to terminate the pregnancy.
8. The victim was displaced from her home when she sought assistance from her relatives.
9. Every effort was made to conceal the abuse and protect the Accused.
10. The physical and emotional trauma suffered by the victim due to the abuse is significant.

[16] These aggravating factors justify a sentence on the higher end of the tariff. I am mindful of all that has been said on behalf of the Accused in his mitigation. But I am also mindful of the court's duty to denounce and deter sexual violence on children by their close family members. If I fail in that duty, all humanity will be lost and evil will flourish in darkness.

[17] I sentence the Accused as follows:

Count 1 – Indecent Assault – 3 years' imprisonment.

Count 2 – Rape – 18 years' imprisonment.

Count 3 – Rape – 18 years' imprisonment.

Count 4 – Rape – 18 years' imprisonment.

Count 5 – Rape – 18 years' imprisonment.

Count 6 – Rape – 18 years' imprisonment.

[18] All sentences are made concurrent. The total effective sentence is 18 years' imprisonment with a non-parole period of 14 years.

[19] The remand period is about 8 months, which has to be considered as time already served. The remaining period to serve is 17 years, 4 months.

[20] A permanent domestic violence restraining order with no contact and non-molestation conditions is issued against the Accused to protect the victim in the future.

[21] Thirty days to appeal.



A handwritten signature in blue ink, consisting of a stylized 'D' and 'G' followed by a horizontal line.

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused