

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

**CRIMINAL CASE NO. HAC 35 OF 2019**

**BETWEEN** : STATE

**AND** : ERNEST PICKERING

**Counsel** : Ms S Naibe for the State  
Mr T Varinava for the Accused

**Date of Hearing** : 19<sup>th</sup> – 20<sup>th</sup> August, 2019

**Date of Summing Up** : 21<sup>st</sup> August, 2019

**Date of Judgment** : 22<sup>nd</sup> August, 2019

**Date of Sentence** : 6<sup>th</sup> September, 2019

**SENTENCE**

- [1] The Accused stands convicted of digital rape of his 5-year old biological daughter after trial. I now pronounce his sentence. I have a duty to explain the sentence to him and the public.
- [2] The facts upon which I base the sentence are as follows.
- [3] The incident occurred in January 2018 when the victim was left behind with the Accused at Waiyavi, Lautoka after her mother left their family home following a domestic dispute. After a week her mother returned and retrieved her from their home under police supervision. The following day, the victim complained to her mother that her genitals were sore. When the mother prodded, the victim said her daddy had touched her genitals. The victim was medically examined. The doctor found a cut on the child's labia minora. The injury was healing and a few days old.

- [4] The Accused in his defence denied sexually abusing his daughter. There is no explanation for the conduct of the Accused except that he may have been drunk when the incident occurred. However, intoxication is not an excuse to sexually abuse a child.
- [5] Regard must be made to both the objective seriousness of the offence and the seriousness of the actual conduct of the Accused. The offence of rape is serious. The maximum sentence prescribed for rape is life imprisonment. For the tariff, I am guided by the decisions in *Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014) and *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018). The tariff provides a yardstick to maintain consistency in the approach to sentencing.
- [6] A comparable case is *State v Asoa* [2019] FJHC 248; HAC81.2018 (25 March 2019) where a young father was found guilty of digital rape of his 5-year old biological daughter and was sentenced to 16 ½ years' imprisonment by Madigan J. However, unlike that case, the Accused in the present case is a person with previous good character. Apart from his previous good character there are no other compelling mitigating factors. His age (27 years old) and family circumstances (married with 4 children) carry little mitigating value.
- [7] In sentencing, the court must strike a balance between the objective seriousness of the offence and the seriousness of the actual conduct of the Accused. The Accused inserted his finger into the vagina of a 5-year old girl. The victim complained to her mother that her genitals were sore. The penetration of a young child's genitals using a finger or an object is a serious form of sexual abuse. The conduct that is subject of denunciation is the unlawful penetration of a child's genitals. The criminality involved is the same regardless of whether the offender uses any of his body parts or objects to penetrate. However, the physical harm done to the victim may depend upon the object or body part used, and which may aggravate the offending.
- [8] The victim was extremely vulnerable due to her tender age. She was sexually abused in her home by her father. Home is a safe haven for children. Parents are guardians of children. When a child is sexually abused in her home by a parent, the harm to the family unit is devastating. In such a situation, emotions are high, loyalties are divided and the heartache caused to the family is permanent. The Accused is the author of his own

demise. The trust that he has breached cannot be regained and the psychological harm he has caused to his own daughter is significant. I take all these into account as aggravating factors.

[9] The court has a duty to denounce the conduct of the Accused and impose sentence that has the effect of deterrence to others. The punishment must reflect the gravity of the offence against a vulnerable child by her own biological father.

[10] I sentence the Accused to **14 years' imprisonment**. The remand period is about 6 months. The law requires the remand period to be taken as time already served. The remaining period to serve is 13 ½ years with a non-parole period of 10 years. The effect of fixing a non-parole period is that the Accused cannot be considered for any form of release by the Executive until he has served 10 years in prison. In fixing the non-parole period I have considered that the Accused is not a repeat serious offender to be 'warehoused' to protect the community from him. I am mindful that the Accused committed a single episode of sexual abuse. The non-parole period reflects the gravity of the offence, while giving the Accused an opportunity to rehabilitate in the prison.

[11] A permanent domestic violence restraining order with standard non-molestation conditions is issued against the Accused to protect the victim in the future.

[12] Thirty days to appeal.



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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.