

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 332 of 2019

[CRIMINAL JURISDICTION]

STATE

V

PAULA MAKUBUNA

Counsel : Ms. S. Shameem for the State
Ms. S. Daunivesi for the Accused

Date of Sentence : 05 March 2020

[The name of the victim is suppressed. Accordingly, the complainant will be referred to as "TP". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said victim.]

SENTENCE

1. Paula Makubuna, you pleaded guilty to the following charges and were convicted accordingly;

FIRST COUNT

Statement of Offence

RAPE: contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

PAULA MAKUBUNA on the 9th day of September, 2019 at Nasinu in the Central Division, penetrated the vagina of TP, a child under the age of 13 years, with his tongue.

SECOND COUNT

Statement of Offence

SEXUAL ASSAULT: contrary to section 210 (1) of the Crimes Act 2009.

Particulars of Offence

PAULA MAKUBUNA on the 9th day of September, 2019 at Nasinu in the Central Division, unlawfully and indecently assaulted **TP**, a child under the age of 13 years, by rubbing his penis on her genitalia.

2. You have admitted the following summary of facts;

The complainant is TP, 12 years old, Student of Savura Road, Wailoku.

The Accused is Paula Makubuna, 62 years old, Caretaker of Jay Santa Ram PTE Ltd of Savura Road, Wailoku.

On the 9th of September, 2019, at about 6pm, the Accused took the Complainant to his house. At the Accused's house, the Complainant was told to sit on the settee in the sitting room and watch TV whilst the Accused went to make tea. After making tea, the Accused came back into the sitting room. He then went to the complainant and licked her vagina using his tongue. The Accused's tongue penetrated the complainant's vagina.

After the above incident, the Accused person then rubbed his penis on the complainant's genitalia.

Thereafter, the Accused person told the Complainant not to tell anyone about the above incidents.

The complainant reported the matter to Samabula Police Station on 11th September, 2019. She was medically examined on 14th September, 2019 and was noted to have hymenal laceration at 4 o'clock, 8 o'clock and o'clock. The Complainant was also noted to have her vaginal opening widened; a copy of the Medical Report is annexed and marked as "A".

At the material time of the offending, the Complainant was below the age of 13 years old; a copy of the Birth Certificate is annexed and marked as "B".

The Accused person was interviewed under caution on 14th September, 2019 and subsequently charged on 17th September, 2019. He has been charged for a count of Rape contrary to section 207(1) and (2) (b) and (3) and a count of Sexual Assault contrary to section 210(1) (a) of the Crimes Act, to which he was pleaded Guilty.

The Accused has nil PC; a copy of the Accused's Record of Previous Convictions is annexed and marked as "C".

3. Pursuant to section 207(1) of the Crimes Act 2009 ("Crimes Act") read with section 3(4) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), the maximum punishment for rape is life imprisonment. Given that the victim is below the age of 13 years, I would apply the sentencing tariff

established in *Aitcheson v State* [[2018] FJSC 29; CAV0012.2018 (2 November 2018) which is 11 years to 20 years for the offence of rape.

4. In the case of *State v Marawa* [2004] FJHC 338; HAC0016T.2003S (23 April 2004), the following remarks were made when sentencing the accused for the offence of rape of a 14 years old child;

[10] Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and by meting out harsh sentences.

*[11] A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public's disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: *Roberts and Roberts* (1982) 4 Cr. App R(S) 8; *The State v Lasaro Turagabeci and Others* (unreported) Suva High Court Crim. Case No. HAC0008.1996S.*

5. The offence of sexual assault under section 210(1) of the Crimes Act carries a maximum sentence of 10 years imprisonment. The sentencing tariff for this offence is an imprisonment term between 2 to 8 years [*State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012)].
6. The offences you are convicted of are founded on the same facts and form a series of offences of similar character. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences you have committed.
7. I am mindful that you committed rape by penetrating the victim's vagina using your tongue.
8. I consider the following as aggravating factors in this case;
 - a) You were known to the victim and you committed the two offences when the victim was in your house to watch TV. There is a breach of trust;

- b) The age gap between you and the victim which is 50 years;
 - c) As far as the second count of sexual assault is concerned, you having rubbed your penis on the victim's genitalia, have committed the most serious form of sexual assault; and
 - d) You exploited the victim's vulnerability.
9. The following are the mitigating factors;
- a) You are a first offender;
 - b) You are remorseful; and
 - c) You have entered an early guilty plea.
10. Your counsel submitted that you are 63 years old, and you were employed as a caretaker. You have reached up to secondary school education.
11. I select 11 years imprisonment as the starting point of your aggregate sentence. Considering the above aggravating factors I would add 05 years to your sentence, and would deduct 2 years as you have nil previous convictions. Now your aggregate sentence is an imprisonment term of 14 years.
12. You have pleaded guilty to the offences at the earliest opportunity and thereby saved the court's time and resources and saved the victim from having to relive her ordeal. This decision of yours also indicates genuine remorse. I would therefore grant you a discount of one-third where a term of 04 years and 08 months will be deducted from your sentence.
13. Accordingly, I would sentence you to a term of 09 years and 04 months imprisonment for the two offences you have committed. I order that you are not eligible to be released on parole until you serve 08 years of your sentence in terms of section 18(1) of the Sentencing and Penalties Act.
14. I note that you have been in custody for a period of 05 months and 21 days in view of this case. The said period shall be considered as a period of

imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.

15. In the result, you are sentenced to a term of 09 years and 04 months imprisonment with a non-parole period of 08 years. In view of the time spent in custody, time remaining to be served is as follows;

Head Sentence - 08 years; 10 months; and 09 days

Non-parole period - 07 years; 06 months; and 09 days

16. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Vincent S. Perera".

Vincent S. Perera

JUDGE

Solicitors:

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