

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 335 of 2019

[CRIMINAL JURISDICTION]

STATE

V

MANUELI VIAKARA

Counsel : Ms. S. Swastika for State
Ms. L. Manulevu for Accused

Date of Sentence : 13 March 2020

[The names of the victims are suppressed. Accordingly, the victims will be referred to as "AN" and "VV". 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 victims.]

SENTENCE

1. Manueli Viakara, you pleaded guilty to the following charges and were convicted accordingly;

COUNT ONE

Statement of Offence

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

Particulars of Offence

MANUELI VIAKARA on the 11th day of September, 2019 at Waisasavu Village, Naitasiri, in the Eastern Division, penetrated the vulva of AN, a child under the age of 13 years, with his tongue.

COUNT TWO

Statement of Offence

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

2009.

Particulars of Offence

MANUELI VIAKARA on the 11th day of September, 2019 at Waisasavu Village, Naitasiri, in the Eastern Division, penetrated the vulva of **AN**, a child under the age of 13 years, with his finger.

COUNT THREE

Statement of Offence

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

Particulars of Offence

MANUELI VIAKARA on the 11th day of September, 2019 at Waisasavu Village, Naitasiri, in the Eastern Division, penetrated the vulva of **VV**, a child under the age of 13 years, with his tongue.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

MANUELI VIAKARA on the 11th day of September, 2019 at Waisasavu Village, Naitasiri, in the Eastern Division, penetrated the vagina of **VV**, a child under the age of 13 years, with his finger.

COUNT FIVE

Statement of Offence

INDECENT ASSAULT: contrary to section 212 of the Crimes Act 2009.

Particulars of Offence

MANUELI VIAKARA on the 11th day of September, 2019 at Waisasavu Village, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **AN**, a child under the age of 13 years, by kissing her lips.

2. You have admitted the following summary of facts;

- 1) *The accused in this matter is MANUELI VIAKARA, 59 years old of Waisasavu Village, Naitasiri, Unemployed.*

- 2) *The first complainant in this matter is AN, 4 years 8 months old, of Waisasavu Village, Naitasiri.*
- 3) *The second complainant in this matter is VV, 7 years 3 months old, of Waisasavu Village, Naitasiri.*
- 4) *The accused is charged with four counts of Rape contrary to section 207 (1) (2) (b) and (3) and one count of Indecent Assault contrary to section 212 pursuant to Crimes Act 2009.*
- 5) *The accused is related to the two complainants in this matter, whereby he is the maternal grandfather of both the complainants.*
- 6) *At the time of the alleged offence the accused and complainant resided in Waisasavu Village in Naitasiri.*

OFFENCE

- 1) *On the 11th of September 2019 the 2nd complainant VV entered into the accused persons' residence in Waisasavu Village in Naitasiri.*
- 2) *As the 2nd complainant entered the house she saw the 1st complainant AN sitting on the mattress naked with her legs apart. She saw that the accused was licking the AN's vagina while he was lying on the mattress.*
- 3) *According to the 2nd complainant AN, the accused had licked her vagina and then spit on his hand. After spitting on his hand he had touched her vagina with his fingers.*
- 4) *Thereafter the accused had kissed AN on her lips.*
- 5) *After kissing AN, the accused then licked the second complainant VV's vagina with his tongue and touched her vagina with his fingers.*
- 6) *After the accused had touched VV's vagina he told both the complainants' not to tell anyone about the incident.*
- 7) *The accused also gave balloons to the complainants' which were hospital gloves that were blown up.*
- 8) *The matter was reported to Vunidawa Police Station on 17th of September 2019.*
- 9) *The complainants' were medically examined on the 17th of September 2019.*
- 10) *The doctor's specific medical findings were as follows:*
VV
The D12 of the medical report states that redness was noted within the Hymeral structure.

AN

The D12 of the medical report states that redness was noted within on the vaginal wall. Upon palpitation the vaginal wall appeared oedematous and painful for the complainant.

CAUTION INTERVIEW AND THE CHARGE:

The accused was then interviewed under Caution on the 19th day of September 2019.

In his Caution Interview at question and answer 30 and 34 the accused admits that both the complainants' were related to him.

The accused has also admitted in his caution interview question and answer 54, 59 and 68 that he had licked and touched both the complainants' vagina.

Q54- *"How did you rub your finger?"*

"I lick my finger to make it wet and rub it on her vagina."

Q59- *"What happened after you rub your index finger on v's vagina?"*

"I spread her legs and rub my tongue on her vagina."

Q68- *"What did you do with her?"*

"To touch her vagina and rub my tongue on her vagina."

The accused was then charged and produced in Nausori Magistrates Court on the 20th of September 2019.

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 victims are 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 indecent assault carries a maximum penalty of 5 years imprisonment in terms of section 212(1) of the Crimes Act. The applicable tariff is 12 months to 4 years imprisonment. (*Ratu Penioni Rokota v State* [2002] FJHC 168; HAA0068J.2002S)
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 five offences you have committed.
7. I consider the following as aggravating factors in this case;
 - a) You are the grandfather of both victims. There is a serious breach of trust;
 - b) The age gap between you and one victim is 55 years and the other victim is 52 years; and
 - c) You exploited the victims' vulnerability and naivety.
8. The following are the mitigating factors;
 - a) You are remorseful; and
 - b) You have entered an early guilty plea.
9. You are not a first offender as you have been convicted for criminal intimidation in 2014.

10. Your counsel submitted that you are 58 years old, married and you have 5 children. You have studied up to class 8. It is also submitted that as a result of an accident in 2015 you are now paraplegic.
11. However, being a paraplegic did not stop you from committing the aforementioned offences on two vulnerable children in 2019.
12. I select 16 years imprisonment as the starting point of your aggregate sentence. In selecting this starting point I have considered the fact that you have raped 2 children, that you have raped each victim twice and then again indecently assaulted one victim.
13. Considering the above aggravating factors I would add 05 years to your sentence. Now your aggregate sentence is an imprisonment term of 21 years. The only mitigating factor is your early guilty plea which reflects your remorse. You have saved the time and resources of the justice system and prevented the victims from having to relive their dreadful experiences. I would grant you a discount of one-third where a term of 07 years will be deducted from your sentence, in view of your early guilty plea.
14. Accordingly, I would sentence you to a term of 14 years imprisonment for the five offences you have committed. I order that you are not eligible to be released on parole until you serve 10 years of your sentence in terms of section 18(1) of the Sentencing and Penalties Act.
15. The prosecution submits that you have been in custody for a period of 05 months and 25 days in view of this case. That is from 18/09/19. 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.

16. In the result, you are sentenced to a term of 14 years' imprisonment with a non-parole period of 10 years. In view of the time spent in custody, time remaining to be served is as follows;


Head Sentence - 13 years; 06 months; and 05 days

Non-parole period - 09 years; 06 months; and 05 days

17. Having considered the facts of this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victims in this case 'AN' and 'VV' as the protected persons. You are hereby ordered not to have any form of contact with the said victims directly or by any other means, unless otherwise directed by this Court.

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




Vincent S. Perera
JUDGE

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