

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 006 OF 2020

BETWEEN : **STATE**

AND : **RUSIATE VULA**

Counsel : Mr Z Zunaid for the State
 : Ms A Prakash for the Accused

Date of Hearing : **29 September 2020**

Date of Sentence : **12 October 2020**

SENTENCE

- [1] The offender is 35 years old. He has pleaded guilty to a charge of digital rape of a two year old girl. The incident occurred in 2019 at Vunisoco Settlement, Namosi.
- [2] On the day of the incident, the offender went to the victim's home and carried her to the back of her house. He inserted his finger into the victim's vagina and penetrated it several times and afterwards put his finger towards his nose to smell it. The matter came to light when the victim reported the incident to her mother. The facts tendered by the prosecution in support of the charge does not reveal any physical trauma to the victim's genitals as a result of the offender's action.
- [3] The offender grew up in a rural community. Very little is known about his parents or siblings. He was raised by his uncle. He dropped out of school at Year 7. He is not able to read and write. He never had a stable employment. He earned a living by farming.
- [4] The offender is suffering from a neurological disorder, Epilepsy since childhood and he has been on medications to manage his condition. There is also some history of substance

abuse exacerbating his condition. The offender's mental health has been assessed by a psychiatrist and a psychologist for the purpose of punishment. Dr Gaikwad, who is a qualified psychiatrist based at the St Giles Hospital describes the offender's intellectual functioning as follows:

Due to chronic illness and low level of educations his intellectual functioning appears to be impaired. Some of the symptoms of mild intellectual disability include: taking longer to learn to talk, but communicating well once they know how, being fully independent in self-care when they get older, having problems with reading and writing, social immaturity, increased difficulty with the responsibilities of married or parenting and they can be benefited from specialized education plans. Person with mild intellectual disability has an IQ range of 50 to 69.

He is able to maintain optimum level of functioning for activities of daily living and understands social and cultural norms. He is also aware of the wrongfulness of the conduct and knows that the conduct was wrong.

[5] Mr Cakau, who is a qualified psychologist based at the Department of Corrections, is of the opinion that one of the factors that may explain the offender criminality is poor problem-solving skills with impulsive decision making which leads to risk taking behaviour without considering the outcome or pros and cons of his actions.

[6] However, both Dr Gaikwad and Mr Cakau are of the opinions that the offender was aware of his actions at the time of the alleged crime. I accept the medical evidence that the offender suffers from some form of intellectual disability but there is no evidence that his mental disability contributed to the commission of the offence in a material way to be considered a mitigating factor. In his report, Mr Cakau said:

[The Offender] expressed a sound insight and judgment about himself and the crime he committed. He acknowledged the crime he committed hence taking full responsibility and accountability of his action without any form of denial.

- [7] The offence of rape is punishable by life imprisonment and when a child is sexually abused by an adult male, the court's duty is to denounce the crime and impose a deterrent punishment. The aggravating factors in this case are that the victim was extremely vulnerable due to her tender age and that she was abused by an adult male with a vast age gap from the same settlement as hers. The crime is so despicable that the offender cannot escape a long prison sentence despite his mental disability.
- [8] However, the court is bound to consider the mitigating factors. The offender entered an early guilty plea. He is contrite and has saved the child victim the trauma of giving evidence. His guilty plea has also saved court's time and resources. He is a first time offender with previous good character.
- [9] Finally, the offender has been in custody on remand since 21 December 2019. A downward adjustment is made to the sentence to reflect the remand period.
- [10] I have considered both the objective seriousness of the offence and the seriousness of the actual conduct of the offender. The offender is convicted and sentenced to 12 years' imprisonment with a non-parole period of 10 years.



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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