

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 206 of 2019**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**VILIKESA RAWAMILA**

**Counsel** : Ms. W. Elo for State  
Mr. K. Chang for Accused

**Hearing on** : 13 – 15 October 2020

**Summing up on** : 16 October 2020

**Judgment on** : 16 October 2020

**Sentenced on** : 30 October 2020

[The name of the complainant is suppressed. Accordingly, the complainant will be referred to as “SS”. 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 complainant.]

**SENTENCE**

1. Vilikesa Rawamila, you stand convicted of the following offences after trial;

**FIRST COUNT  
(Representative Count)**

*Statement of Offence*

**Sexual Assault:** contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**VILIKESA RAWAMILA**, between the 1<sup>st</sup> of January 2016 to the 31<sup>st</sup> December 2016, at Vuisiga, Vunidawa, in the Eastern Division, unlawfully and indecently assaulted **SS** by touching her breasts and

fondling her vagina.

**SECOND COUNT**  
**(Representative Count)**

*Statement of Offence*

**Rape:** contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009.

*Particulars of Offence*

**VILIKESA RAWAMILA**, between the 1<sup>st</sup> of January 2016 to the 31<sup>st</sup> December 2016, at Vuisiga, Vunidawa, in the Eastern Division, had carnal knowledge of **SS**, without her consent.

**FOURTH COUNT**  
**(Representative Count)**

*Statement of Offence*

**Rape:** contrary to Section 207 (1) & (2) (a) of the Crimes Act 2009.

*Particulars of Offence*

**VILIKESA RAWAMILA**, between the 1<sup>st</sup> of January 2017 to the 31<sup>st</sup> December 2017, at Vuisiga, Vunidawa, in the Eastern Division, had carnal knowledge of **SS**, without her consent.

2. The victim in this case is your daughter. She was born on 12/05/02. Her mother, your wife, passed away in 2010. One night during the first term of school in 2016, you came after a drinking session and had your dinner. By that time the victim, your daughter was sleeping in the living room of the house along with your mother and your 11 year old son. You went to your daughter who was at that time below the age of 14 years old and you carried her to your bedroom.
3. As you enter the bedroom, upon your daughter looking at your face, you told her to shut up and not to say a word. You placed her on the bed and removed her clothes. Your daughter did not do anything because you were her father and because you were drunk. You then started to touch her breasts and while touching her breasts from one hand you started touching her vagina from the other. Then you inserted your hand inside her vagina. Your daughter did not know what to do, again, because it was her father who was doing this to her. Thereafter you inserted your penis into her vagina. Your daughter said that it was painful to her and also she felt ashamed of what you did to her. The next day, she observed blood stains in her vagina.

4. Thereafter on one night in the first term of school in 2017, when your daughter was 14 years old, you found her sleeping in your room when you came home after drinking. You removed her clothes, touched her breasts and licked her vagina. Then you inserted your penis inside her vagina. During the same school term, you raped her by inserting your penis inside her vagina again. Your daughter said that you had threatened her that you will cut off one of her ears, if she tells someone about what you were doing to her.
5. Being the father of the victim, your conduct as revealed in this case is shameful and despicable. You have robbed your daughter's childhood from her and made her your sex object when she was simply 13 years old. I noted the pain in her when she gave evidence and the difficulty for her to come to terms with the reality where she was raped by her own father on more than one occasion. Her mother passed away when she was 07 years old. You were supposed to be her protector and the guardian. Your daughter will never be able to get over the fact that her father raped her and there is no doubt that this disgusting experience will haunt her for the rest of her life and will affect her future in many ways. Thus, your conduct towards your daughter, to say the least, was inhuman.
6. The victim impact statement reveals *inter alia* that your daughter has developed difficulties in concentrating in school, she had lost trust on the people around her, she is having flashbacks and that she is having suicidal thoughts. She says that her whole family hated her and blamed her that she lied and she feels lonely and rejected because of what you had done to her.
7. 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.
8. The sentencing tariff for rape of a child victim above the age of 13 years is a term of imprisonment between 10 to 16 years. [see *Anand Abhay Raj v State* [2014]

FJSC 12); *State v Tubunavau* [2019] FJHC 950; HAC346.2018 (30 September 2019); *Kumar v State* [2018] FJSC 30; CAV0017.2018 (2 November 2018); *Aitcheson v State* [[2018] FJSC 29; CAV0012.2018 (2 November 2018); *Prasad v State* [2019] FJSC 3; CAV0024.2018 (25 April 2019)]

9. 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 02 to 08 years [*State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012)].
10. The offences you are convicted of forms 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 three offences you are convicted of.
11. In the case of *Subramani v State* [2018] FJCA 82; AAU0112.2014 (1 June 2018) the Court of Appeal observed thus;

*[15] The offence of rape of young person related to the appellant is a serious offence. In this case the complainant was 11 years old and the appellant was her grand uncle (her grandfather's brother). The authorities indicate that whilst rehabilitation is a factor to be considered when fixing a non-parole period, so also are deterrence, denunciation, condign punishment and community protection and expectations. The appropriate person to balance these objectives in each case is the sentencing judge. In the present case, given the age of the appellant, rehabilitation is not a particularly relevant matter whereas the expectations of the community and the protection of young girls should be reflected in both the head sentence and the non-parole term so as to send a strong signal that the counts will impose appropriate sentences in such cases.*

12. In the case of *State v. AV* [2009] FJHC 24; HAC 192 of 2008 (2 February 2009) Goundar J said thus;

*. . . Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences.*

13. As I observed in the case of *State v Lagolevu* [2020] FJHC 787; HAC52.2019 (25 September 2020), given the number of cases brought before the courts in Fiji and the sentiments expressed in those cases it is clear that sexual exploitation of children is rife. There is no conclusive evidence however, on whether the increase noted in the number of such cases (quantity) filed during the past few years is a result of an increase in the awareness among the community and access to justice or whether in fact the number of offences committed are on the increase. Whichever is the case, protecting Fiji's children from sexual predators has become a priority.
  
14. Therefore, when sentencing offenders who had sexually exploited children, a sentencing court should be mindful of the need to protect the community from offenders, to deter the offenders and other persons with similar impulses from committing like offences and to signify that the court and the community denounce the sexual exploitation of children, but always bearing in mind to punish the offender to an extent and in a manner which is just in all the circumstances (vide section 4(1) of the Sentencing and Penalties Act). The punishment or the sentence should be proportionate to the seriousness of the offending.
  
15. I consider the following as the aggravating factors in this case;
  - a) You are the father of the victim who was without a mother at the time of offending, there is a serious breach of trust;
  - b) You have raped her over a period of time; however, I am mindful of the fact that the prosecution was able to prove only two instances; and
  - c) The fact that you have exploited the victim's vulnerability and naivety.
  
16. The only mitigating factor in your favour is the fact that you do not have previous convictions for the past 10 years.

17. You are 50 years old and is a widower. It is submitted that you are a farmer and you have studied up to form four.
18. Considering the three offences you have committed, I would select 12 years as the starting point of your aggregate sentence.
19. In view of the above aggravating factors I would add 08 years to your sentence. When it comes to a case of rape, the most serious form of breach of trust is when a father rapes his own daughter. Your sentence should reflect the denunciation of your conduct by this court and the society and it should serve as a deterrent to other men out there in the society with similar impulses, who are inclined to treat their daughters as sex objects. I would have increased your sentence further if not for the prosecutor's failure to clearly establish the period and the number of instances you have raped your daughter. Even though the prosecution should prove only one incident where the charge is a representative count, if the prosecution is able to prove beyond reasonable doubt that more than one offence was committed during the period in question, in my view, that factor could be taken into account as an aggravating factor.
20. Now your sentence is an imprisonment term of 20 years.
21. In view of the mitigating factor alluded to above, I would deduct 02 years.
22. Accordingly, I hereby sentence you to a term of 18 years imprisonment. This is your aggregate term of imprisonment for the three offences you are convicted of. I order that you are not eligible to be released on parole until you serve 15 years of your sentence pursuant to the provisions of section 18(1) of the Sentencing and Penalties Act.
23. The above final sentence is not within the sentencing tariff pronounced in *Raj* (supra). However, given the fact that this case presents the highest form of breach

of trust where a father had raped his biological daughter on two occasions, when she was 13 years old and 14 years old, I am convinced that though it is outside the tariff, 18 years imprisonment term is just and proportionate.


24. You were granted bail in relation to this matter on 22/08/19 and your bail was revoked on 22/07/20. Accordingly, I note that you have spent about 06 months in custody, in view of this matter. The said period you have spent in custody shall be regarded as time served in relation to this case in terms of section 24 of the Sentencing and penalties Act.
25. In the result, you are sentenced to an imprisonment term of 18 years with a non-parole period of 15 years. In view of the time spent in custody, time remaining to be served is as follows;

Head Sentence - 17 years and 06 months

Non-parole period - 14 years and 06 months

26. Having considered the facts of this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim in this case 'SS' as the protected person. You are hereby ordered not to have any form of contact with the said victim directly or by any other means, unless otherwise directed by this Court.
27. Thirty (30) days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

**Solicitors;**

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