

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 14 OF 2017

BETWEEN : **STATE**

AND : **LEVENI WAQA**

Counsel : *Ms. L. Latu with Mr. A. Kumar for the State*
Ms. A. Bilivalu for the Accused

Hearing on : *12th – 13th of October 2020*

Summing up on : *15th of October 2020*

Judgment on : *21st of October 2020*

Sentence on : *27th of November 2020*

SENTENCE

1. Mr. Leveni Waqa, you have been found guilty and convicted of one count of 'Sexual Assault' contrary to section 210 of the Crimes Act and four counts of Rape contrary to section 207 (1) and 2 (a) of the Crimes Act.

2. Those charges were;

COUNT 1

Statement of Offence

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

Particulars of Offence

Leveni Waqa, on the 31st of May 2014 at Ba, in the Western Division, unlawfully and indecently assaulted Marica Ranadi.

COUNT 2

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

Leveni Waqa, on the 06th June, 2014 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

COUNT 3

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

Leveni Waqa, on the 14th day of August 2014 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

COUNT 4

(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

Leveni Waqa, between the 01st day of July 2015 and the 7th day of September 2015 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

COUNT 5

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

Leveni Waqa, on the 01st day of November 2015 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

3. You pleaded not guilty to the charges and the ensuing trial lasted for 2 days. At the trial the complainant Marica Ranadi, and Ms. Raijieli Nailavi, the wife of the pastor, to whom the PW1 has relayed the incidents first, gave evidence for the prosecution while the accused remained silent exercising his constitutional right and abstained from calling any witnesses in defence.
4. It was proved during the trial that, being the biological father of the complainant, how you abused your own daughter to satisfy your lustful desires.
5. The offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the five offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

6. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the aggregate sentence to be imposed on you.
7. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life. The offence of Sexual Assault carries a maximum term of 10 years of imprisonment as for section 310 of the Crimes Act.
8. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

9. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“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 meting out harsher sentences”.

10. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

11. It is apparent the present accepted tariff for the offence of a child between the age of 13 years to 16 years is 10 to 16 years of imprisonment as for the case of **Anand Abhay Raj v State** [2014] FJSC 12; CAV03 of 2014 (20 August 2014). The complainant was around 15 years at the time of the alleged incidents. The sentencing tariff for the offence of Sexual Assault is 2 to 8 years of imprisonment. (**State v Epeli Ratabacaca Laca HAC 252 of 2011**) This falls within category (ii) of the given tariff.
12. In consideration of the fact that this is an aggregate sentence, as well as the above tariffs, I will commence your sentence at 12 years of imprisonment.
13. The aggravating factors are as follows:
- (i) This was a serious and abhorrent crime.
 - (ii) There was gross abuse and breach of trust.
 - (iii) The accused was victim’s biological father.
 - (iv) The impact of the crime on the victim was traumatic.

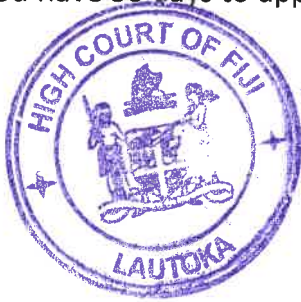
14. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 2 years. Now your aggregate sentence is 14 years of imprisonment.
15. Your counsel has indicated that you have no previous convictions or any pending cases and has maintained a clean character. You are said to be remorseful. In consideration of all the mitigating factors I will deduct 2 years. Therefore your final sentence is 12 years of imprisonment.
16. Accordingly, I sentence you to a term of imprisonment of 12 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, and having duly considered all the relevant factors, I order that you are not eligible to be released on parole until you serve 8 years of that sentence.
17. Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”
18. You were arrested on the 04th of January 2017. You were in remand till granted bail on the 16th of March 2017. Thereafter, your bail was cancelled by this court on the 12th of October 2020 and is in remand since then. Altogether, you have been in custody for a period of 4 months. I will deduct 4 months in lieu of that as the period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 4 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

19. In result, you are sentenced to a term of imprisonment of 12 years with a non-parole period of 08 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 11 years and 08 months.
Non-parole period - 07 years and 08 months.

20. You have 30 days to appeal to the Court of Appeal if you desire so.



Chamath S. Morais

JUDGE

At Lautoka

27th November 2020

Solicitors for the State : *Office of the Director of Public Prosecutions*
Solicitors for the Accused : *Legal Aid Commission, Lautoka*