

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 194 of 2020

STATE

vs.

JOSEFA TUINAWASABULA ULUDOLE

Counsel: Ms. U. Tamanikaiyaroi with Ms. S. Bibi for the State
Ms. L. Manulevu with Ms. R. Nabainivalu for Accused

Date of Hearing: 28th to 29th March 2022

Date of Closing Submission: 31st March 2022

Date of Judgment: 21st April 2022

Date of Sentence: 26th April 2022

SENTENCE

1. Mr. Josefa Uludole, you stand convicted for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act which carries a maximum sentence of ten years imprisonment.
2. It was proved during the hearing that you had taken the Complainant to your house and then indecently and unlawfully touched her breasts and backside. You had then forcefully had carnal knowledge of the Complainant without her consent. The Complainant was 14 years old intellectually impaired child. She is related to you as you are the maternal granduncle.

3. This is a case of sexual exploitation of an intellectually impaired young adolescent by a known person within her dwelling environment. Sexual exploitation of children within their own domestic environment has become a social menace. The social enigma of abusing children for sexual gratification needs to address promptly and effectively. Therefore, I find this is a grave crime.

Purpose of the Sentence

4. The primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for offences of this nature to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.
5. These two offences are founded on the same series of offending with similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
6. Gates CJ in **Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2nd of November 2018))** held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
7. Justice Madigan in **State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (the 14th of November 2012)** has expounded the tariff for the offence of Sexual Assault as between 2 years to 8 years' imprisonment.
8. Rape is a physical invasion committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim.

9. The Victim Impact Report states this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence. The Complainant claims that she has been ignored and sidelined by her own relatives after this incident, blaming her for this incident. Therefore, I find the level of harm in this offence is significantly high.
10. You had meticulously executed this crime by taking her to your house when no one was at your place. She was not in a position to escape or seek assistance from others. You are well conversant with the fact that the Complainant is an intellectually impaired child. You have manipulatively obtained an advantage of her vulnerability by committing this crime. I accordingly find that the level of culpability is exceedingly high in this crime, requiring a sentence closer to the higher end of the tariff range.
11. The Complainant is related to you. You are her granduncle. You had abused that trust and confidence she had in you as an elderly relative. The age difference between you and the Complainant is substantially high. You have exposed this fourteen-year-old child to sexual activities at a very young age by committing this crime. I consider these reasons as aggravating factors of this offence.
12. The learned Counsel for the Defence, in his mitigation submissions, submitted your personal and family background, which has no mitigatory value.
13. You are a first offender; hence, you are entitled to a substantive discount.
14. In view of the reasons discussed above, I sentence you to a period of sixteen (16) years imprisonment as an aggregated sentence for one count of Rape and one Count of Sexual Assault.
15. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find fourteen (14) years of non-parole period would serve

the purpose of this sentence. Hence, you are not eligible for parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

16. Accordingly, I sentence you to a period of sixteen (16) years imprisonment as an aggregate sentence for the one count of Rape and one count of Sexual Assault as charged in the information. Moreover, you are not entitled to parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

17. You have been in remand custody for this case for nearly one (1) month before the sentence as the Court did not grant you bail. In pursuant to Section 24 of the Sentencing and Penalties Act, I consider one (1) month as a period of imprisonment that you have already served.
18. Accordingly, the actual sentencing period is **fifteen (15) years and eleven (11) months** imprisonment with a non-parole period of **thirteen (13) years and eleven (11) months**.
19. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court, or any other competent Court, is varied or suspended. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.

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



A handwritten signature in blue ink, appearing to be "R.D.R.T. Rajasinghe", is written above a horizontal dotted line.

Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

26th April 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.