

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

**Criminal Case No. HAC 83 of 2021**

**BETWEEN** : **STATE**

**AND** : **SENITIKI TUVOU**

**Appearances** : Ms. Tamanikaiyaroi, U for the State  
: Mr. Cakau, J for the Accused

**Sentence** : 22 June 2022

**SENTENCE**

1. Following a trial, the Accused was found guilty and convicted of one count of rape and three counts of sexual assault.
2. After the victim's parents separated, her father got into another relationship while her mother entered into a *de facto* relationship with the Accused. The victim and her younger brother went to live with their biological father's elder sister in Tacirua. Their mother and the Accused lived in Narere where they rented a flat. Now and then, the victim and her younger brother would go live with their mother and the Accused in Narere when invited to do so by their mother.
3. During these visits to their mother at different times in 2020 while the victim was in Class 7 and under the age of 13 years, the Accused carried out a series of sexual assaults on the victim. He penetrated her vagina with his finger and on other occasions, fondled her breast, rubbed his penis against her buttocks, and made her touch his penis. These acts happened while the victim's mother was at work and the victim was at home with her grandmother

who was in her own room. The offending in the last count happened in the presence of the victim's younger brother while he was looking outside. When he turned back, the Accused quickly pulled out the victim's hand from his penis.

4. The victim did not tell anyone and the matter only came to light when her younger brother who had been present when the Accused made her touch his penis told their aunt in Tacirua. She confronted the victim who relayed to her what the Accused had been doing to her. The matter was reported to the Police and the Accused was arrested, interviewed and charged with one count of digital rape, and three counts of sexual assault.
5. I accepted the victim's evidence of the sexual acts performed on her by the Accused and did not believe she had fabricated the allegations of digital rape and sexual assaults.
6. I did not believe the Accused person's evidence that he had not been at home and could not have done the alleged acts on the victim. He did admit being in Narere while the victim and her brother were staying there and going to school, and had admitted that he had stayed in Narere while waiting to leave for Kadavu on a work assignment.
7. I accept the victim's evidence that her school work was affected as she kept thinking about what the Accused had done to her.
8. The maximum penalty of life imprisonment for rape is the clearest indication of the seriousness with which the legislature views this offence.
9. In *Ram v State* Petition for Special Leave to Appeal No: CAV 12/2015, Decision of 23 October 2015, Gates P stated at [21]:

The casting of the offence of rape in the Crimes Decree is such that no distinctions are drawn as to gravity of offending dependent on the object used to penetrate or of the orifice of the victim penetrated. No separate penalties are prescribed. Sufficient no doubt is the unwanted invasion, the violation of the person, the forcible intrusion into the privacy and body of another.

10. Being under the age of 13 at the time these offences were perpetrated on her, the victim was a child of tender age and incapable of giving consent. The tariff for the rape of a child

is 11 – 20 years imprisonment. In *State v Koroduva* Criminal Case No. HAC 178 of 2019, this Court, referring to *Aitcheson v State* Criminal Petition No: CAV 0012.2018, 2 November 2018), stated that this increased tariff is indicative of the Court hardening its heart against the rape of children, and its “denunciation... in the strongest terms.”

11. In *Ram v State* Petition for Special Leave to Appeal No: CAV 12/2015, 23 October 2015, the Court stated:

*The community is rightly concerned that anyone who molests or rapes a young child will bring a severe penalty upon himself. That message cannot change.*

12. Objectively therefore, the rape of a child is a very serious offence. Those who commit these types of offences on young children can rightly expect stiff punishment to reflect the gravity of the offending.
13. The maximum penalty for sexual assault is 10 years imprisonment. The tariff ranges from 2 – 8 years imprisonment. Sentences at the higher end of the tariff are reserved for “blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.” (*State v Laca* Criminal Case No: HAC 252 of 2011, Decision of 14 November 2012).
14. In *Laca* (supra) Madigan J referred to the *United Kingdom's Legal Guidelines for Sentencing* which divide sexual assault offending into three categories as follows:

**Category 1** (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

**Category 2**

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

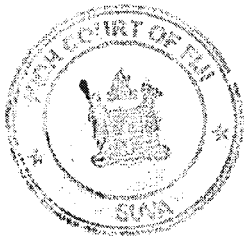
(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

**Category 3**

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

15. The Accused is married with eight children. Six are still attending school. His family had occupied quarters of the Forestry Department in Colo i Suva allocated to the Accused during his period of employment but have been asked to vacate. His wife is unemployed. While the Accused's family circumstances are to be regretted, this can hardly be a mitigating factor in sentencing. (See *Naqasima v The State* Criminal Appeal No. HAA 007 of 2012, at [9])
16. He says he is remorseful for the harm and trauma experienced by the victim, his de facto partner's daughter. His family is willing to apologise to the victim and her family for the wrong and wish to do so at the earliest opportunity. He and his family will have to live with the shame and bear the stigma of his recent past.
17. He is a first time offender and was 45 years old at the time of the offending. He pleads for a departure from the tariff for rape, but of course, this can only be done in exceptional circumstances which have not been shown to exist in this case.
18. His previous good character is a mitigating factor, but I am not minded to give this "undiminished weight" given the serious nature his offending on a child victim under his care. (*State v Bala* Criminal Case No. HAC 101 of 2020, at [11])
19. As the *de facto* partner of the victim's mother at the time of these offences, his relationship to the victim was that of a step-father. There is a vast age difference between him and the victim. He was in a position of authority and power over his partner's children. Committing these offences against the child victim was a gross breach of trust not only of his partner but also of the victim who ought to have been able to look to him for protection.
20. By committing these offences, the Accused has exposed a young child to sexual activity and robbed her of her innocence. The victim's younger brother was also present when the Accused made the victim touch his penis and therefore witnessed the said act.

21. The Accused perpetrated these acts over a period of time. His actions affected the victim's school work. On oath, she said she kept thinking about what the Accused had done to her. I accept that the victim was emotionally disturbed as a result of the Accused's actions. These are serious aggravating factors.
22. The charge of rape and three counts of sexual assault in all four counts arose out of a series of offences of the same or similar nature. Of conviction in such cases, section 17 of the *Sentencing and Penalties Act* provides that the Court may impose an aggregate sentence. The aggregate sentence should 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 the offences.
23. Taking all of the mitigating and aggravating features as well as the remand period of 1 year 3 months into account, I sentence the Accused to 14 years for rape, and 4 years aggregate for sexual assault. The sentences are to be served concurrently. The total sentence is 14 years imprisonment with a non-parole period of 12 years.
24. This is a domestic violence offending. I therefore issue a permanent domestic violence restraining order against the Accused to protect the victim. The Order is for standard non molestation and no-contact conditions pursuant to ss. 27 and 29 (1) (2) (a) (b) and (e) of the *Domestic Violence Act*.
25. 30 days to appeal to the Fiji Court of Appeal.



  
**Stainiu F. Bull**  
**ACTING JUDGE**

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Vosarogo Lawyers for the Accused