

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

**Criminal Case No.: HAC 81 of 2019**

**STATE**

**V**

**ASIF IQBAL AHMED**

**Counsel** : Ms. P. Lata for the State.  
: Mr. R. Kumar and Ms. M. Singh for the Accused.

**Dates of Hearing** : 11, 12, 13 and 14 April, 2022  
**Closing Speeches** : 15 July, 2022  
**Date of Judgment** : 18 July, 2022  
**Date of Sentence** : 01 August, 2022

---

**SENTENCE**

---

*(The name of the complainants are suppressed they will be referred to as "S.S" and "S.Z" respectively).*

1. In a judgment delivered on 18<sup>th</sup> July, 2022 this court found the accused guilty and convicted him for all the seven counts of rape as charged.
2. The brief facts were as follows:  
The two victims are sisters, at the time of the alleged incidents the accused was renting in the house of the victims. The victims and the accused are

known to each other he is the paternal uncle of the victims. Both victims were under the age of 13 when all the incidents happened. The victims called the accused “Dada” meaning paternal grandfather out of respect for him.

3. The first victim (S.S) was 9 years in 2014 the year of the first incident of rape. There are five counts concerning this victim.
4. In the year 2014 the first victim was a year 3 student. The accused went into her bedroom forcefully laid her on her bed removed her clothes and had forceful sexual intercourse.
5. In the year 2015 the victim was a year 4 student the accused called the victim to his house by saying that his wife had called her. As soon as the victim went inside the house the accused closed the door, made the victim lie on his bed and blocked her mouth with his hand. He then forcefully removed her clothes unzipped his pants and had forceful sexual intercourse.
6. In 2016 the victim was 11 years of age and a year 5 student. The accused once again told the victim that his wife had called her. When the victim went in the house of the accused he closed the door forcefully made her lie on the bed blocked her mouth with his hand unzipped his pants removed her clothes and had forceful sexual intercourse.
7. In 2017 the victim was a year 6 student. The accused called her saying his wife was calling her. When she was inside the accused closed the door, forcefully made the victim lie on the bed and blocked her mouth with his hand. Thereafter, he unzipped his pants, removed her clothes and had forceful sexual intercourse.

8. Finally in June or July, 2018 the victim was alone at home by this time she was 12 years of age. All her family members had gone to distribute Eid sweets the accused went into her room forcefully made her lie on the bed removed her clothes and then had forceful sexual intercourse.
9. The victim did not want the accused to do all these things to her and it was painful. She was scared so she did not tell anyone about what the accused was doing to her.
10. The second victim (S.Z) was 9 years and in year 3 in 2016 the year of the first incident of rape on her. There are two counts concerning this victim. In February 2016, the accused called the victim to his house to massage his legs. The accused was alone in his house lying on his bed. He called the victim on his bed and told her to remove her clothes, when she was naked he inserted his finger into her vagina. She knew the finger had penetrated her vagina because it was painful to her. She went home but did not tell anyone about what had happened to her because she was scared that the accused would kill her.
11. In March 2019, the accused called the victim to massage his legs and back, after she finished massaging, the accused started touching her body. The victim was wearing a dress the accused told her to remove her panty and then inserted his finger into her vagina. The victim knew the accused had inserted his finger into her vagina because it was painful. At home she didn't tell anyone because she was scared.
12. After the matter was reported to police the accused was arrested, caution interviewed and charged. The victims were medically examined.

13. The state counsel filed sentence submissions and victim impact statements whereas the defence counsel filed mitigation submissions for which this court is grateful.
14. The following personal details and mitigation was presented on behalf of the accused:
  - a) The accused is 45 years of age;
  - b) First offender;
  - c) Married; and
  - d) Sole bread winner of the family.
15. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

### **AGGRAVATING FACTORS**

16. The aggravating factors are:
  - a) Breach of Trust

The accused is the paternal uncle of the victims and also their neighbour. The victims respected the accused as their grandfather. The accused grossly breached the trust of the victims by what he did to them. There is a notable increase in cases involving breach of trust by persons known to the victim. This type of offending is very much prevalent in our society.

b) Age Difference

The victims were 9 years of age respectively at the time of the first offending whereas the accused was a matured adult. He should have exercised care and restraint.

c) Planning

There is some degree of planning by the accused he had systematically planned what to do, he knew when the victims were alone. He would either go into their house or call them to his house and he committed these acts over a period of time. The accused even went to the extent of lying to the first victim that his wife was calling her.

d) Vulnerable Victims

Both victims were vulnerable and unsuspecting they innocently obliged to the accused whereby he took advantage and sexually abused them. The victims were supposed to be safe in the comfort of their home but this was not so due to the actions of the accused. The accused was bold and undeterred in what he was doing to the victims.

d) Exposing children to sexual abuse

The accused had exposed the victims to sexual abuse over a period of time in different ways. He basically robbed them of their innocence and exposed them to an unexpected experience which they will not be able to forget easily.

f) Victim Impact Statement

According to the victim impact statement the victims have suffered psychological and emotional harm as follows:

- a) First Victim “S.S”
  - (i) Fearful when she sits beside a boy;
  - (ii) Self-blame;
  - (iii) Questions herself as to why her;
  - (iv) Continuously thinks of the incidents and starts crying.
  
- b) Second Victim “S.Z”
  - (i) After the incidents she has started to hate herself;
  - (ii) At one time wanted to hurt herself;
  - (iii) Has become emotional and short tempered;
  - (iv) Trust broken hard to make friends;
  - (v) Feels betrayed.

17. The contents of the victim impact statements filed by the victims cannot be ignored in light of the evidence given by the victims. The harm caused to the victims was a direct result of what the accused had done to them (*see State vs. Afzal Khan, criminal case no. HAC 75 of 2016*).

#### **TARIFF**

18. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in *Gordon Aitcheson vs. The State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.

19. Section 17 of the 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.”*

20. I am satisfied that the offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the seven offences.
21. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely. Children are entitled to live their lives free from any form of physical or emotional abuse. When family members sexually abuse children violating the Domestic Violence Act, they should not expect any mercy from this court. The punishment ought to be such that it takes into account the society’s outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.
22. There has been an increase in sexual offences involving offenders who are known to the victim and are mature adults. It is shocking to note the manner in which the accused had committed the offences on the two victims.
23. The Supreme Court in *Mohammed Alfaaz v State [2018] FJSC 17; CAV0009.2018 (30 August 2018)* has stated the above in the following words at paragraph 54 that:

*“It is useful to refer to the observation expressed by the Fiji Court of Appeal in *Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118* wherein court said that “No society can afford*

*to tolerate an innermost feeling among the people that offenders of sexual offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”*

24. Madigan J in *State v Mario Tauvoli HAC 027 of 2011 (18 April, 2011)* said:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

25. The Supreme Court in *Felix Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015)* mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

- (a) *whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) *whether there had been a breach of trust;*
- (c) *whether committed alone;*
- (d) *whether alcohol or drugs had been used to condition the victim;*
- (e) *whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*
- (f) *whether the impact on the victim had been severe, traumatic, or continuing;*
- (g) *whether actual violence had been inflicted;*



- (h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) *whether the method of penetration was dangerous or especially abhorrent;*
- (j) *whether there had been a forced entry to a residence where the victim was present;*
- (k) *whether the incident was sustained over a long period such as several hours;*
- (l) *whether the incident had been especially degrading or humiliating;*
- (m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
- (n) *Time spent in custody on remand.*
- (o) *Extent of remorse and an evaluation of its genuineness;*
- (p) *If other counts or if serving another sentence, totality of appropriate sentence.*

26. After assessing the objective seriousness of the offences committed I take 11 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused is a first offender who has come to court with a clean record. In this regard, I reduce the sentence for good character and his other mitigation.

27. I note from court file that the accused was remanded for 3 months and 14 days, in accordance with section 24 of the Sentencing and Penalties Act the remand period is deducted as a period of imprisonment already served. The final aggregate sentence is 16 years, 8 months and 16 days imprisonment.

28. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for seven counts of rape on both victims is 16 years, 8 months and 16 days imprisonment.
29. This court is satisfied that the term of 16 years, 8 months and 16 days imprisonment 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 offence.
30. Mr. Ahmed you have committed serious offences against your two nieces who you were supposed to protect and care. The victims were unsuspecting and vulnerable. You cannot be forgiven for what you have done to these victims. Whatever you did to the two victims was abhorrent and a callous exploitation for your sexual gratification. You committed the offences on the two unsuspecting victims at delayed intervals so that they forget what you were doing to them with time.
31. It is a sad feature of this case that the accused used to go and drink kava with the father of the victims every day and therefore was always in close proximity of the victims whilst he continued abusing them. The accused by his presence was no doubt creating fear on the victims from the age of 9 years is unacceptable and must be denounced in every way possible.
32. The continued increase in sexual offence cases seen nowadays is a sad indictment on the society. It is so shocking and very soon if not already it would undermine one's faith in humanity. Children are supposed to be living a life free from fear or abuse by anyone but sadly such is not the case for the two victims in this case.

33. As a result of the accused actions as per the victim impact statements the victims were psychologically and emotionally affected to the extent that they cannot live a normal life. Rape is not only a physical act, it not only destroys the very soul of the victims, but also brings about a sense of hopelessness and anxiety which cannot be measured or repaired by anyone.
34. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the two victims (aged 9 years at the time of the first offending) who were the accused's nieces compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
35. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
36. Considering the above, I impose 14 years and 8 months as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case.
37. In summary I pass an aggregate sentence of 16 years, 8 months and 16 days imprisonment with a non-parole period of 14 years and 8 months to

be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victims a permanent non-molestation and non-contact orders are issued to protect the victims under the Domestic Violence Act.

38. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
Judge



**At Lautoka**

01 August, 2022

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs Roneel Kumar Lawyers, Nadi for the Accused.**