

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO.: HAC 22 OF 2021**

**BETWEEN:** STATE

**AND:** JACK CAMBELL BALEIVERATA

**Counsels** : Ms. E. Thaggard for the State  
Ms. E. Radrole for the Accused

**Date of Judgment:** 25<sup>th</sup> March 2023

**Date of Sentence w/submission:** 26<sup>th</sup> April 2023

**Date of sentence Ruling:** 26<sup>th</sup> April 2023

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**SENTENCE**

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*(The name of the victim is suppressed and will be referred to as "D.P.")*

**Introduction**

1. Mr. Jack Cambell Baleiverata, was tried in absentia (but represented) and convicted on the 25<sup>th</sup> of May 2023 of two counts of Rape contrary to Section 207 (1) and (2)(a) of the Crimes Act, 2009 by this Court after trial of which I presided. The both parties tendered written submissions on sentencing. Accordingly I will endeavor to determine a just sentence without in any way considering the fact of absconding.

**Circumstances of the Offending**

2. The Accused Mr. Jack Cambell Baleiverata was 26 years of age who was employed as a

temporary labourer to harvest cane at the plantation of the victim's father. Whilst working there, the accused took advantage of the daughter of his employer and forcibly and violently raped her twice when she was attending to her routine activities within her homestead. PD had gone out to feed and attend to the goats about 200 meters from her hose when the Accused had approached from behind her and violently grabbed her taken her into the scrub jungle and had rape her on two occasion for 25 to 30 minutes. The accused appear to have cunningly and artful observed and followed her and accosted her and cruelly and brutally raped her twice within the same day. The accused used the cane knife to threaten her both before and after committing the offence.

3. In short, the Accused had taken advantage of P.D's timidity and innocence and forced himself on this young girl to satisfy his sexual desires within the victim's own homestead. The victim was frightened and traumatized that did not disclose this to anybody but suffered in silence. As a result of this act of rape she became pregnant whilst still being school going child. These are the brief facts of this offending.

### **Sentencing regime**

4. The maximum penalty prescribed for Rape contrary to Section 207 (1) and (2) (a) / (b) of the Crimes Act is life imprisonment as this undoubtedly is considered to be a very serious offence. The tariff is between 11 years and 20 years imprisonment. Determining this tariff Gates C.J., in **Aitcheson v. State** ([\[2018\] FJSC 29](#); CAV0012.2018 (2 November 2018)) held that,

*“The tariff previously set in Raj v The State [\[2014\] FJSC 12](#) CAV0003.2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.”*

### **Objective seriousness, culpability and harm of the offending**

5. In the case of **State v. Tauvoli** ([\[2011\] FJHC 216](#); HAC 27 of 2011 (18 April 2011)); His Lordship Justice Paul Madigan stated:

*“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 the 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.”*

6. The facts and figures for the first quarter of 2023 made public by the DPP's office as well as the Fiji Police Force confirm an appreciable increase in child abuse and child rape complaints. In a majority of such allegations the perpetrators are known adults some with familial connections. Thus, 12 years since Justice Madigan's observation made in *State v. Tauvoli* (supra), rape of children and pubescent juveniles by known adults remains a serious and perennial social issue even now. The circumstances thus demand and it is now necessary to impose stringent and even prohibitive sentences that will inhibit and deter any would be perpetrators of child sexual abuse and also protect the children and the pubescent.
7. Rape is a physical invasion committed on the victim under 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. The degree of invasion should be ascertained based on the level of harm and culpability.
8. Mr. Jack Cambell Baleiverata have been found guilty of a sexual crime of utmost gravity. The offences involve the violent sexual penetration of a vulnerable pubescent girl of 15 years. There are many features that aggravate the culpability and harm factors. You subjected her to repeated acts of penetration of twice over. The victim was forced, coerced and intimidated to facilitate the commission of these offences and was threatened to make the likelihood of her reporting them remote. The complainant felt both fear and was helpless. She was reluctant to tell her parents promptly, of what you did to her.
9. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to which she had been traumatized and the

others of her community had been looking at her differently. She says that she's no longer respected in the way she was before this incident and the pregnancy. She had lost her friends as well as two years of her school. She states further that this had ruined her future and that she is now afraid to move about alone. She also states that she gave birth to a baby girl who was given up for adoption. This events have affected her studies. It is clear from the victim impact statement that, this offending has had a very significant and long-lasting psychological impact on the minor that requires consideration in sentencing.

10. The aggravating factors are as follows.

- (i) Serious Breach of Trust. The convict was employee of PD's father. He occupied a position of some power and also trust in relation the victim whilst so employed at their house and plantation. Whilst being in such a position engaging in such sexual activity is morally wrong. P.D was vulnerable to the Accused's seniority in age and circumstances who was in a position of trust to some extent as an employee of her father. The culture and the traditions of the Fijian society expects elders to protect young children in the community and the elders do enjoy the respect of the young. Mr. Jack taking advantage of this culture sexually abused P.D a young adolescent child. The rape of a child is an appalling and perverse use of male power exploiting to the full the position of power which Mr. Jack held over her whilst being an employee of her father. She was raped in the safety of her own homestead and on their land, by a person from whom she was entitled to expect and protection. Mr. Jack has violated the trust which the complainant and her parents placed he and abused that position of trust.
- (ii) There was disparity in age between you and the complainant. The complainant was almost 16 years old at the time you committed these offences on her and you were around 26 years in age.
- (iii) He sexually abused and raped her multiple times taking advantage the complainant's vulnerability, helplessness and innocence and you have caused untold misery to her and her family.
- (iv) Used violence and threatened her with a cane knife and also slapped her

- (vi) There was pre-planning and pre-meditation in this offending.
  - (vii) As a result of this act of rape the victim was impregnated at a tender age.
  - (viii) He has exposed the innocent mind of a child to sexual activity at such a tender age you had no regard to her rights as a child and a human being and her right to have a happy, unmolested and peaceful childhood.
11. The mitigating factors are as follows:
- (i) Mr. Jack Cambell Baleiverata is now around 26 years of age, married and lives with the family and he said to be a farmer.
  - (ii) According to the Antecedent Report annexed to the court record and the submissions I find that the accused does not have any previous convictions. He appears to be a first offender. As such Mr. Jack Cambell Baleiverata will be considered as being a person of previous good character.
  - (iii) The fact that he absconded will not in any way be considered against him.

### **Sentence**

12. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), reads thus;
- “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.”*
13. The counts of Rape for which Mr. Jack Cambell Baleiverata was convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for the offences.
14. These offences are so serious that only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of

the case, will be as follows. As for the aggregate sentence, I pick and start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total sentence 16 years imprisonment. As for the mitigating factors I will I deduct 2 years leaving a balance of 14 years imprisonment.

15. I am satisfied that you are manipulative; you are somewhat of a sexual predator of a prepubescent child to some extent. On the one hand this is a case which would justify a long 'denunciatory' sentence. I bear in mind that, such a sentence is one of last resort and in the circumstances of this offending in my judgment, justice and protection of the public can and should be achieved by such a long sentence.
16. In view of the reasons discussed above, I sentence Mr. Jack Cambell Baleiverata to 14 years imprisonment as an aggregate sentence for the Rape counts for which he stands convicted.

### **Non-Parole period**

17. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that ten (10) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
18. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim the purpose of this sentence is to punish the Accused in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what Mr. Jack Cambell Baleiverata did to the complainant and in a manner which is just in all the circumstances of the case.


### **Head Sentence**

19. Accordingly, I sentence Mr. Jack Cambell Baleiverata to a period of fourteen (14) years imprisonment for the counts of Rape as charged and convicted. However, he is not entitled to parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

**Actual Period of the Sentence**

20. Mr. Mr. Jack Cambell Baleiverata was arrested and remanded for this case on 12<sup>th</sup> March 2021 and was in remand up to 18<sup>th</sup> November 2022 and was in custody for a period of 8 months and 6 days. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 8 months be considered as imprisonment that he has already served.
21. Accordingly, the actual sentence is a period of is thirteen (13) years and four (4) months imprisonment with a non-parole period of nine (09) years and four (4) months.
22. This sentence will become operative and effective from the date of arrest and committal of the accused.
23. The complainant's name is permanently suppressed to protect her privacy.
24. The Accused has thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



  
Gihan Kulatunga  
**JUDGE**

**At Labasa**

26<sup>th</sup> May, 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused