

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 146 of 2022**

**STATE**

**V**

**JONETANI CORIVUKA**

**Counsel** : Ms. S. Naibe for the State.  
: Accused not present.

**Date of Submissions** : 18 January, 2023

**Date of Sentence** : 20 January, 2023

---

**SENTENCE IN ABSENTIA**

---

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

1. In a judgment delivered by the Magistrate's Court at Ba on 19<sup>th</sup> May, 2022 the accused was found guilty and convicted for one count of rape as charged.
2. The amended charge was as follows:

*Statement of Offence*

RAPE: Contrary to section 149 and 150 of the Penal Code, Cap. 17

### *Particulars of Offence*

Jonetani Corivuka on the 26<sup>th</sup> day of November, 2008 at Vatulaulau, Ba in the Western Division, had unlawful carnal knowledge of "P.N" without her consent.

3. By transfer order dated 9<sup>th</sup> September, 2022 the learned Magistrate transferred the file to the High Court for sentencing. This file was first called in this court on 16<sup>th</sup> September, 2022. The accused was not present and a bench warrant was issued thereafter on seven occasions this file was called and the bench warrant remained unexecuted.
4. A perusal of the copy record shows that the accused last appeared in the Magistrate's Court on 31<sup>st</sup> August, 2011. In the presence of the accused the matter was adjourned to 3<sup>rd</sup> November, 2011 for judgment. This court is satisfied that the accused was aware of the date to appear in the Magistrate's Court but had chosen not to and has therefore voluntarily absented himself.
5. When the matter was called in this court a bench warrant was promptly issued. The accused has not appeared or been apprehended this court cannot be waiting and therefore it is only proper that the sentence be delivered without any further delay.
6. The brief facts were as follows:

In 2008 the victim was 10 years of age and a year 4 student. The victim knows the accused who used to cut cane on her father's farm and who lived not far from her house at Vatulaulau, Ba. The accused is also the father of one of the victim's school mate.

On 26<sup>th</sup> November, 2008 at about 11:30 am a lady came to the house of the victim and wanted to know where to catch the bus. The victim's mother told the victim to accompany the lady and show her the way. Both went along the footpath across a river and reached the roundabout where the victim left the lady.

On the way home the victim met the accused, he held the victim's hand and asked her to accompany him to the cane field. The victim refused and said that she wanted to go home. The accused forcefully took the victim to the feeder road made her forcefully lie on the ground removed her clothes, kissed her on her lips and breasts. The victim was afraid and she started to cry, the accused did not stop and started to rub the victim's vagina opened his zipper took out his penis and forcefully inserted it into the victim's vagina.

The accused also warned the victim not to tell anyone about what he had done to her, thereafter the accused left the victim. When the victim reached home she told her mother and sister about what the accused had done to her. The matter was reported to the police and an investigation was carried out. The accused was arrested, caution interviewed and charged.

7. The state counsel filed sentence submissions after a long delay which is unfortunate.
8. The following personal details of the accused have been taken from court file:
  - a) The accused was 44 years of age at the time of the offending;
  - b) First offender;
  - c) Is married with five children; and
  - d) Is a Farmer.

9. 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**

10. The aggravating factors are:

a) Breach of Trust

The accused is known to the victim and her family and was also their neighbour. The accused grossly breached the trust of the victim by what he did to her.

b) Prevalence of the offending

There is a notable increase in cases involving persons known to the victim. This type of offending is very much prevalent in our society.

c) Age Difference

The victim was 10 years of age at the time of the offending whereas the accused was 44 years (a matured adult). The age difference is substantial.

d) Vulnerable Victim

The accused knew the victim was alone, vulnerable and unsuspecting he took advantage of the situation and sexually abused her.

e) Exposing a child to sexual abuse

The accused exposed the victim to sexual abuse at a very young age. I am sure she will not be able to forget what the accused had done to her.

## **TARIFF**

11. 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.
12. 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. 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.
13. 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 offence on the victim.
14. 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.”*

15. 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.”*

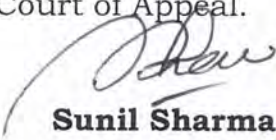
16. The Supreme Court in *Felix Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015)* mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

- (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 pre sent;*
  - (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.*
17. After assessing the objective seriousness of the offence committed I take 11 years imprisonment (lower range of the scale) as the starting point of the 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 with a clean record. In this regard, I reduce the sentence for the accused for his good character and other mitigation.
18. I note from the court file that the accused was granted bail on the first day of his court appearance at the Magistrate's Court. Therefore no further reduction will be given. The final sentence is 16 years and 6 months imprisonment.
19. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim (aged 10 years at the time of the offending) 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.

20. 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.
21. Considering the above, I impose 15 years 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.
22. In summary I pass a sentence of 16 years and 6 months imprisonment with a non-parole period of 15 years to be served before the accused is eligible for parole. The sentence is to commence from the date the accused is arrested.
23. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
Judge



**At Lautoka**  
20 January, 2023

**Solicitors**

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

**Accused in absentia.**