

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

**Criminal Case No.: HAC 202 of 2022**

**STATE**

**V**

**VUATE TANOVA**

Counsel : Ms. S. Swastika for the State.  
Ms. B. Muhammed and Ms. A. Kumar for the  
Accused.  
Date of Submissions : 26 March, 2024  
Date of Sentence : 04 April, 2024

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**SENTENCE**

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

1. The accused is charged with the following offences as per the amended information filed by the Director of Public Prosecutions dated 25<sup>th</sup> March, 2024:

**FIRST COUNT**

***Statement of Offence***

**INDECENT ASSAULT:** Contrary to section 212 of the Crimes Act 2009.

### ***Particulars of Offence***

VUATE TANOVA, between the 1<sup>st</sup> of April, 2022 and the 30<sup>th</sup> of November, 2022 at Nadi in the Western Division, unlawfully and indecently assaulted “S.T” by kissing her lips.

### **SECOND COUNT**

#### ***Statement of Offence***

**RAPE:** Contrary to section 207 (1), (2) (b) and (3) of the Crimes Act, 2009.

### ***Particulars of Offence***

VUATE TANOVA, between the 1<sup>st</sup> of April, 2022 and the 30<sup>th</sup> of November, 2022 at Nadi in the Western Division, penetrated the vagina of “S.T” a child under the age of 13 years, with his finger.

2. This file was first called in the High Court on 23<sup>rd</sup> December, 2022 after the filing and service of the information and disclosures the accused on 7<sup>th</sup> February, 2023 pleaded not guilty to both counts. After several adjournments on 12<sup>th</sup> October, 2023 a pretrial conference hearing was conducted and the matter was assigned a trial date for 25<sup>th</sup> March, 2024.
3. On the day of the trial the defence counsel informed the court that the accused wished to take a progressive approach. The amended information was put to the accused who pleaded guilty to both counts. The matter was stood down for the summary of facts to be read which was done. The accused was explained the summary of facts in the Itaukei language which he understood and admitted.
4. The brief summary of facts is as follows:

- a) The victim and the accused are known to each other. The accused is the paternal uncle of the victim. The 8 year old victim was residing with her parents and the accused at Legalega, Nadi.
- b) On an occasion between the 1<sup>st</sup> of April 2022 and the 30<sup>th</sup> of November 2022 the victim was at home in her bedroom lying down and reading a book when the accused went into her room. Upon seeing the accused the victim asked, what was the matter? The accused went close to her face and kissed her lips.
- c) Thereafter the accused slid his hand inside the victim's trousers and under her panty. The accused then poked the victim's vagina with his finger. The accused told her not to inform anyone about what he had done.
- d) The victim informed her class teacher about what the accused had done to her. The matter was thereafter reported to the police. The victim was medically examined on 23<sup>rd</sup> of November 2022 by Dr Salome and her findings were as follows:
- Hymen looked swollen, discharge – yellowish discharge noted around hymen;
  - There was abrasion around the labia minora;
  - Anus was normal;
  - Hymen was not intact.
- e) The accused was arrested, caution interviewed and charged.

5. After considering the summary of facts read by the state counsel which was admitted by the accused, this court was satisfied that the accused had entered an unequivocal plea of guilty on his freewill. This court was

also satisfied that the accused had fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted by the accused satisfied all the elements of the offences of indecent assault and rape as charged.

6. In view of the above, this court found the accused guilty as charged and he was convicted accordingly.
7. State counsel filed victim impact statement, written sentence submissions and the defence counsel filed mitigation submissions for which this court is grateful.
8. The accused counsel presented the following mitigation on behalf of the accused:
  - a) The accused is a first offender;
  - b) He is now 56 years of age;
  - c) Is married;
  - d) Is a Musician by profession;
  - e) He used to earn \$200.00 weekly;
  - f) Sole bread winner of the family;
  - g) Seeks leniency of the court;
  - h) Pleaded guilty.
9. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs.- 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 victim and the accused are known to each other. The accused is the paternal uncle of the victim and they were living in the same house. The accused grossly breached the trust of the victim by his actions.

(b) Age difference

The victim was 8 years of age during the period of offending whereas the accused was 54 years of age. The age difference is substantial and the accused being a matured adult.

(c) Exposing children to sexual abuse

The accused has exposed the victim to an unexpected sexual activity at a very young age and he basically robbed her of her innocence by exposing her to such unexpected sexual encounters.

(d) Victim was vulnerable

The victim was alone, vulnerable, naive and helpless the accused took advantage of this situation and sexually abused the victim. The accused was bold in what he did to the victim.

(e) Safety of the Victim

The victim was supposed to be safe in her bedroom but this was not to be due to the actions of the accused.

(f) Planning

There is some degree of planning involved the accused knew the victim was alone in her bedroom and he took advantage of the situation.

(g) Victim Impact Statement

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

- a) Is afraid of talking to any male in the absence of her mother;
- b) Keeps thinking about what the accused had done to her;
- c) Feels ashamed of what the accused had done.

**TARIFF**

11. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in *Gordon Aitcheson vs The State, Criminal Petition no. CAV 0012 of 2018 (02 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now between 11 years to 20 years imprisonment.
12. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment (*Rokota vs. The State, criminal appeal no. HAA 0068 of 2002*).

## **GUILTY PLEA**

13. The accused pleaded guilty on the day of the trial. In *Gordon Aitcheson vs. The State*, criminal petition no. CAV 0012 of 2018 (2 November, 2018) the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

[14]. In ***Rainima -v- The State*** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:

*“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”*

In ***Mataunitoga -v- The State*** [2015] FJCA 70; AAU125 of 2013 (28<sup>th</sup> May 2015) Goundar JA adopted a similar but more flexible approach to this issue:

*“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”*

[15]. The principle in ***Rainima*** must be considered with more flexibility as ***Mataunitoga*** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.

14. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence (see *Manoj Khera v The State*, CAV 0003 of 2016 (1 April, 2016)).
15. When looking at this case, this court accepts that the accused has shown some remorse when he pleaded guilty. By pleading guilty the accused prevented the victim from reliving her experience in court which is favourable to the accused.
16. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty is not genuine remorse *per se* (see *Gordon Aitcheson's* case supra). In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. Here there is no doubt the timing of the guilty plea is late and the accused by pleading guilty has not shown genuine remorse but some remorse in view of the strong prosecution case against him.



17. Nevertheless, by pleading guilty the accused has also saved the court's time. 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."*

18. I am satisfied that the two 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 for the two offences.

19. 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. I increase the sentence for aggravating factors, the accused gets a reduction for mitigation and good character (although the personal circumstances and family background of the accused has little mitigatory value) the accused is a first offender. The sentence is further reduced for guilty plea, the accused has been in remand for 1 month and 29 days in exercise of my discretion I reduce the sentence by 2 months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final aggregate sentence is 15 years and 10 months imprisonment.

20. Mr. Tanoa you have committed serious offences against your niece a child who was 8 years of age at the time and who you were supposed to protect and care. The victim was unsuspecting and vulnerable, you cannot be forgiven for what you have done. I also note that you have expressed some

remorse in the face of a strong prosecution case and pleaded guilty late in time, however, this does not exculpate you from what you had done to this child. You were a matured adult who should have known better.

21. There has been an increase in sexual offence cases 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 these offences on the victim in her bedroom.
22. 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 and offenders of such crime 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.
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. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was 8 years of age at the time 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.
25. 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.
26. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State AAU0063.2011 (27 February 2015)* at paragraph 2 where Calanchini P (as he was) said:

*[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a*

*prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.*

27. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

*Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.*

28. Considering the above, I impose 13 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.
29. In summary, I pass an aggregate sentence of 15 years and 10 months imprisonment with a non-parole period of 13 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

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



**Sunil Sharma**  
**Judge**



**At Lautoka**

04 April, 2024

**Solicitors**

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

**Office of the Legal Aid Commission for the Accused.**