

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

**CRIMINAL CASE NO: HAC 150 OF 2023**

**THE STATE**

**v**

**MANUELI PITA**

Counsel: Ms S. Swastika for State  
Ms L. Taukei for Defence

Date of Sentence Hearing: 24 June 2024  
Date of Sentence: 08 July 2024

(The name of the Victim is suppressed. She is referred to as MW)

**SENTENCE**

1. Mr Manueli Pita, you stand convicted of three counts of Rape on the following amended information filed by the Director of Public Prosecutions:

## **Count One**

### *Statement of Offence*

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

### *Particulars of the Offence*

**MANUELI PITA**, between 1<sup>st</sup> January 2022 to the 31<sup>st</sup> of December 2022 at Lautoka, in the Western Division, penetrated the vagina of **MW**, a child under the age of 13 years, with his tongue.

## **Count Two**

### **(Representative Count)**

### *Statement of Offence*

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

### *Particulars of Offence*

**MANUELI PITA** between 1<sup>st</sup> of February 2023 to the 13<sup>th</sup> of September 2023 at Lautoka, in the Western Division, penetrated the vagina of **MW**, a child under the age of 13 years with his penis.

## **Count Three**

### *Statement of Offence*

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

### *Particulars of Offence*

**MANUELI PITA** on 16<sup>th</sup> of September 2023, at Lautoka, in the Western Division, penetrated the vagina of **MW**, a child under the age of 13 years, with his penis.

2. You pleaded guilty to the above counts on your own free will. You understood the charges and the consequences of the guilty pleas. I am satisfied that the guilty pleas are informed, unequivocal and entered freely and voluntarily.
3. You agreed with the following summary of facts read over to you in Court. The facts agreed on satisfy all the elements of Rape as charged on each count. I find you guilty on each count as charged and convict you accordingly.

4. The facts you agreed on are that:

- I. The accused in this matter is MANUELI PITA, 48 years old of Tawatawa, Saru, Lautoka, Unemployed.
- II. The complainant in this matter is MW, 12 years old of Tawatawa, Saru, Lautoka, and a student.
- III. The accused is charged with three counts of Rape contrary to section 207 (1) (2) (a) (b) (3) pursuant to Crimes Act 2009.
- IV. The incident in this matter for count 1 occurred between 1<sup>st</sup> January 2022 and the 31<sup>st</sup> of December 2022. For 2<sup>nd</sup> count the incident occurred between 1<sup>st</sup> of February 2023 to the 13<sup>th</sup> of September 2023. For the 3<sup>rd</sup> count the alleged incident occurred on the 16<sup>th</sup> September 2023.
- V. The complainant was under the age of 13 years during the time of offending.
- VI. The accused and the complainant are related to each other. The accused is the paternal uncle of the complainant.

**1<sup>ST</sup> Count**

- VII. On an occasion between the 1<sup>st</sup> January 2022 and the 31<sup>st</sup> December 2022, the complainant was at home when the accused entered her bedroom.
- VIII. The complainant was sitting on her bed when the accused sat beside her and told her to close the door. The complainant then closed the door and by the times she did, the accused was naked.
- IX. The complainant then took off her clothes and laid down on bed. The accused then lifted her legs up and inserted his tongue into her vagina.

**2<sup>nd</sup> Count**

- X. Between the 1<sup>st</sup> February 2023 and the 13<sup>th</sup> of September 2023, the accused would enter the Complainant's bedroom.

XI. The accused continued to insert his penis into the complainant's vagina on a regular basis from 1<sup>st</sup> February 2023 to the 13<sup>th</sup> of September 2023.

### **3<sup>rd</sup> Count**

XII. On the 16<sup>th</sup> of September 2023, the complainant was home with her siblings. The accused sent her siblings to plant cabbage and sent the complainant to tidy her room.

XIII. The accused entered the complainant's room whilst he was wearing a towel. The complainant then removed her clothes as instructed by the accused.

XIV. The accused then laid the complainant down and inserted his penis into her vagina.

XV. Thereafter the matter was reported.

XVI. The complainant was examined by Dr. Salome on the 19<sup>th</sup> of September 2023. The medical examination revealed that:

- Labia both sides appear red and inflamed.
- Hymen appeared inflamed at 5 o' clock position.
- Hymen was not intact.

### CAUTION INTERVIEW AND THE CHARGE:

The Accused was arrested on the 20<sup>th</sup> of September 2023 and interviewed under caution.

The Accused was then charged and produced in Lautoka Magistrate Court on the 22<sup>nd</sup> of September 2023.

5. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years' imprisonment<sup>1</sup>.
6. In selecting the sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution, Section 4 of the Sentencing and Penalties Act 2009 (SPA), the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having considered the seriousness of the offence and the harm caused to the victim, I would select the appropriate starting point. The final sentence will be determined after adjusting for the aggravating and the mitigating factors.

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<sup>1</sup> Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)

7. The courts in Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the rights of the children who are vulnerable members of our society. Our society and the children, expect elders to care and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.
8. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against sexual abuse of children.
9. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that if anyone yield to this crime will meet with severe punishments.
10. Section 17 of the Sentencing and Penalties Act allows the Court to impose an aggregate sentence 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. Accordingly, you will be imposed an aggregate sentence for convictions on all three counts.
11. You have repeatedly sexually abused a child over a period of one year. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I would select a starting point of 12 years from the lower range of the tariff as the first step in the sentencing process.
12. I identify the following aggravating and mitigation factors with the help of the submissions filed by the Counsel:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 47 years old at the time of the offence when your victim was just 12 years old.
- (b). You took the opportunity and exploited the vulnerability of a child<sup>2</sup>.
- (c). The victim is your niece. She lived with you under your care and protection. She trusted you as her paternal uncle. She would never have expected you to commit these crimes on her. You breached the trust of the victim.
- (d). There is evidence that the offences were pre-planned.
- (e). The medical examination revealed that the victim suffered multiple injuries in her vagina.

Mitigating Factors:

- (a). You are married with no children. You are a security officer by employment.
- (b). You cooperated with the police during the investigation<sup>3</sup>.
- (c). You pleaded guilty to the charges at the first available opportunity. I take your early guilty pleas to be a genuine expression of remorse. The early guilty pleas saved the court's time, resources and saved the victim from reliving her ordeal in Court.
- (d). You have no previous convictions. You have maintained a clear record over the past 48 years of your life.

13. According to the State, you have been in remand roughly for two months. The remand period will be deducted from your sentence to arrive at the final sentence.

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<sup>2</sup> Kumar v State [2014] FJCA 151AAU 151(19 September 2014)

<sup>3</sup> Cokanisiga v The State [2005] FJCA 57

14. I add 3 years to the starting point of 12 years for above mentioned list of aggravating factors to arrive at an interim sentence of 15 years. I deduct 3 years for mitigating factors and the remand period to arrive at a final aggregate sentence of 12 years' imprisonment.
15. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 11 years.
16. **Summary**
- Mr Manueli Pita, you are sentenced to an aggregate imprisonment term of 12 years for all three convictions with a non-parole period of 11 years.
17. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge  
Judge

8 July 2024

At Lautoka

Solicitors:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence