

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 018 of 2021

STATE

V

MOHAMMED JUNIOR HASSAN

**Counsels: Ms. Uce for the State**

**Ms. Sharma & Ms. Prasad for the Accused**

**Dates of Trial: 1 and 2<sup>nd</sup> May 2024**

**Date of Judgment: 5<sup>th</sup> June 2024**

**Date of Sentence: 19<sup>th</sup> July 2024**

*The name of the victim is suppressed. Accordingly, the victim will be referred to as "SS".*

**SENTENCE**

1. **Mohammed Junior Hassan**, you were charged with the following offences

**Statement of Offence (a)**

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

### **Particulars of Offence (b)**

**Mohammed Junior Hassan**, between the 1<sup>st</sup> day of May, 2020, to the 31<sup>st</sup> day of December 2020 at Nadi, in the Western Division, had carnal knowledge of SS, without her consent.

2. In a judgment delivered on 5<sup>th</sup> June, 2024 this court found the accused guilty of one count of Rape and convicted him accordingly for the same.
3. The following facts was proven by prosecution during the trial beyond reasonable doubt:
4. In August 2020 at the date and time of the offending the victim was 15 years of age and her date of birth was 10<sup>th</sup> of November 2005
5. Between the 1<sup>st</sup> of May 2020 and the 31<sup>st</sup> of December 2020 towards the end of the year, The victim "SS" was sleeping in her room with her brother when her father the accused 39 years of age entered the room shifted the victim's waist towards her brother, remove her pants and panties and inserted his penis into her the victim's vagina from behind the victims buttocks.
6. The victim revealed to her mother and aunty that her father the accused had forcefully had sex with her after she gave birth to her child and after the aunty and her mother had told her to reveal the name of the father of her child.
7. The matter was reported to police and accused was arrested, interviewed and charged for one count of Rape. The accused was apprehended in Court in which pleaded not guilty to the one count of Rape but was found guilty after trial. The accused was remanded in custody.

8. The State Counsel filed written sentence submissions and the defence counsel filed mitigation for which this court is grateful.
9. The following personal details and mitigation was submitted by the counsel for the accused:
10. The accused was 39 years old at the time of the offending; First offender; married with four children and resides with his family; He is employed as a Carpenter. Earns \$350 per week and supports the family;
11. The accused is a first offender. The State too confirms that there are no previous convictions recorded against him. Therefore, Court considers the accused as a person of previous good character.
12. 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.

In terms of the Victim Impact Statement filed in Court, it is recorded that the victim has been emotionally and psychologically traumatized by your actions. It is clear that the impact of your actions has emotionally disturbed the victim where she was pregnant when she was 15 years of age and baby passed away after four months. Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

*4. — (1) The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

13. I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

14. The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for life.

15. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of ***Mohammed Kasim v. The State* [1994] FJCA 25; AAU 21 of 93 (27 May 1994)**; where it was stated:

*"...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage."*

16. In the case of ***Anand Abhay Raj v. The State* [2014] FJSC 12; CAV 0003** of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathyaa Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rape of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range

of sentences or sentencing tariff is between 10 and 16 years imprisonment.

17. However, in the case of **Aitcheson v State [2018] FJSC 29; CAV0012** of 2018 (2 November 2018); His Lordship Chief Justice Gates stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*“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.”*

In ***Aitcheson v State (Supra)***, it was said:

*“[72] Undoubtedly it has been accepted by the society that rape is the most serious sexual offence that could be committed on a woman. Further it is said that; “A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female.””*

18. In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013)**; has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

19. In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I took a starting point of **11** years imprisonment for the count of Rape.
20. The aggravating factors are as follows:
- (i) You are the father of the victim. Being so, you should have protected and safeguard the victim. Instead you have breached the trust expected from you and the breach was gross.
  - (ii) There was a large disparity in age between you and the victim. The victim was 15 years of age, at the time you committed this offence on her. At the time of the offending you were 39 years of age. Therefore, you were over 24 years older than the complainant.
  - (iii) You took advantage of the victim's vulnerability, helplessness and naivety.
  - (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the victim of her innocence.
  - (v) I find that there was some degree of planning and premeditation on your part in committing this offence. You were aware that the complainant was at home sleeping with her younger brother.
  - (vi) The complainant has been emotionally and psychologically traumatized by your actions and the harm is said to be continuing.
  - (vii) The frequent prevalence of the offence of Rape in our society today.
21. Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is **15 years** imprisonment for the count of Rape.

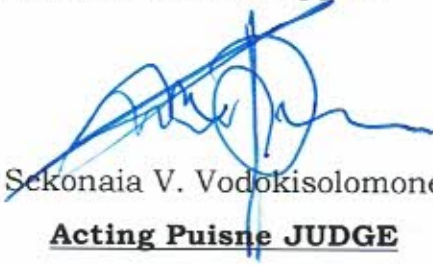
22. Mohammed Junior Hassan, you are now 42 years of age. You are said to be married, with 4 children. You are a carpenter by occupation earning approximately \$350.00 per week. You reside at Saunaka Nadi.
23. Unfortunately, the above are all personal circumstances and cannot be considered as mitigating circumstances.
24. Your counsel has submitted that you are a first offender and the same was confirmed by the State. A report was filed by the state to confirm that you are a first offender.
25. Therefore, Court will consider you as a person of previous good character and will grant you discount in lieu of this fact. For previous good character the court reduces your sentence by 1 year and your sentence now is **14 years** imprisonment.
26. Furthermore, I find that you have already spent time in remand before and after you were convicted by this court
27. Section 24 of the Sentencing and Penalties Act 2009 reads thus:  
  
*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*
28. You were arrested for and produced in the Nadi Magistrate’s Court on 14<sup>th</sup> January 2021 and remanded into custody. You were granted bail by the High Court of Lautoka on 8<sup>th</sup> of November 2021. Thereafter, on 5<sup>th</sup> June, 2024, upon your conviction for this case, you were remanded into custody once again until 19<sup>th</sup> July 2024. Accordingly, you have been in custody for a total period of about 12 months and 8 days. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold

that a period of **12 months 8 days** should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

29. Considering the time you have spent in remand, the time remaining to be served is as follows; **12 years' and 11 months and 23 days imprisonment.**
30. This is your sentence, I order that you serve **12 years' and 11 months and 23 days** in prison custody with a Non-parole period – **10 years 11 months and 23 days imprisonment.**

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



  
Sekonaia V. Vodokisolomone  
**Acting Puisne JUDGE**

At Lautoka this 19<sup>th</sup> Day of July 2024

Solicitors for the State: Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused: Office of the Legal Aid Commission, Lautoka.

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