

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 18 of 2023

STATE

-v-

ASIVOROSI GATA

Counsel : Mr. Lal, Unal D for State
: Mr. Ravuniwa, Tobia for the Accused

Date of Sentence: 16th January, 2026

SENTENCE

The name of the complainant is suppressed as per Court Order and she will be referred to as “LM”.

- [1]. **ASIVOROSI GATA** you pleaded guilty to two counts (Counts 1 and 3) of Indecent Assault on Female contrary to **section 154(1)** of the *Penal Code, Cap. 17* but pleaded not guilty to two counts (Counts 2 and 4) of Rape contrary to **section 149 and 150** of the *Penal Code, Cap. 17*.
- [2]. The two counts of Indecent Assault on Female are as follows;

First Count

Statement of Offence

Indecent Assault on Female: Contrary to section 154(1) of the Penal Code, Cap. 17.

Particulars of offence

Asivorosi Gata between the 1st day of January to the 31st day of December 2008 at Naboro, in the Central Division, unlawfully and indecently assaulted a girl namely “LM”.

Third Count

Statement of Offence

Indecent Assault on Female: Contrary to section 154(1) of the Penal Code, Cap. 17.

Particulars of Offence

Asivorosi Gata between the 30th day of April to the 17th day of May, 2009 at Naboro, in the Central Division, unlawfully and indecently assaulted a girl namely “LM”.

- [3]. After a one day trial, the Court finds you not guilty of one count of Rape (as in Count 4) and acquitted you. However, you were found guilty for one count of Rape (as in Count 2) as follows;

Second Count

Statement of Offence

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

Particulars of Offence

ASIVOROSI GATA, between the 1st day of January to the 31st of December 2008 at Naboro, in the Central Division, had unlawful carnal knowledge of a girl namely “LM” without her consent.

- [4]. You are therefore convicted for two counts of Indecent Assault on Female contrary to **section 154(1)** of the *Penal Code, Cap. 17* and one count of Rape contrary to **section 149 and 150** of the *Penal Code, Cap. 17*.

Sentencing Guidelines

- [5]. Before sentencing you, the court has considered **sections 4(1) and 4(2)** of the **Sentencing and Penalties Act, 2009**. These sections provides factors that the sentencing court should consider before sentencing you.

Law and Tariff

Counts 1 and 3 – Indecent Assault on Females

- [6] The punishment for Indecent Assault on Female is 5 years imprisonment. There is no tariff for this offence then but this court decides to follow the tariff on Indecent Assault whereby the tariff ranges from 12 months to 4 years. (Refer: **Ratu Penioni Rokoto v, State** [2002] FJHC 168; HAA 68J of 2002S (23 August, 2002).

Count 2 – Rape

- [7]. The maximum punishment for rape is life imprisonment.
- [8]. A new tariff has now been set for child rape in the Supreme Court of Fiji decision in **Aitcheson v State [2018] FJSC 29; CAV 0012.2018** (2 November 2018) whereby in paragraph 25, the Court held that:

“The tariff previously set in Raj v State [2014] FJSC 12; CAV 03 of 2014 (20 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”.

- [9]. In the High Court of Fiji in **State v Tikodramai - Sentence [2023] FJHC 185; HAC17.2021** (30 March 2023) stated;

[27] 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.”

Sentence

- [10]. In considering the circumstances of the offending and the accused culpability for the two counts (1 and 3) for Indecently Annoying a Female issue a sentence of 1 year imprisonment for each of the counts.

- [11]. As for the second count of Rape the court will consider the following factors;

Starting Point

- [12]. In considering the seriousness of the offending and the fact that you preyed on a young innocent victim, I select a starting point of 12 years imprisonment.

Aggravating Factors

- [13]. The Accused lived in the same neighbourhood as the victim for many years, The victim referred to the accused as “grandpa”. The accused actions clearly indicated a serious breach of trust.

[14]. In considering the above factor, your sentence is enhanced by 2 years and your sentence is 14 years imprisonment.

Mitigating Factors

[15]. There is no indication that you had an adverse record prior to this offence. Based on that the court reduces 1 year from your sentence and your final sentence is 13 years imprisonment.

Sentence for more than one offence

[16]. **Section 17** of the **Sentencing and Penalties Act, 2009** 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."

[17]. Since you are convicted of more than one offence founded on the same facts pursuant to **section 17** of the **Sentencing and Penalties Act, 2009** your head sentence is 13 years imprisonment.

Summary of Sentence

[18]. Your sentence is summarized as follows;

Count 1 - Indecent Assault on Female – 1 year imprisonment

Count 2 – Rape – 13 years imprisonment (Head Sentence)

Count 3 – Indecent Assault on Female – 1 year imprisonment.

[19]. I order that all terms are to be served concurrently to each other. Therefore, your total term is 13 years imprisonment.

Advanced Age

[20]. Your counsel submits that your advanced age mitigates your sentence. You are now 84 years old. You were born on 16th November, 1942. There is a principle in sentencing that a sentence should normally be shortened so as to avoid the possibility that an elderly offender will not live to be released from prison (*Rokota v The State* [2002] FJHC 168; HAA0068J.2002S (23 August 2002)).

[21]. However, old age is not a mitigating factor considering your degrading conduct against the young innocent victim. I accept the fact that with old age you are not prone to medical issues however, that is not factor for this court to grant you mercy. At the time of the offending, you were 66 years old and the victim was only a young Primary school student. You preyed on a young child who considered you as her grandfather.

[22]. According to the last Medical Report dated 26th November, 2024 submitted to this Court, your heart sounds are normal with clear lung fields. Your blood pressure and blood readings are normal too. I note that that the problem lies with your left knee which you are unable to extend as it elicits pain. Your right leg though it is fully extended but with inability to flex. The doctor also submitted that the range of normal movement of both lower limbs is nil.

[23]. Based on the above, I am not convinced that your advanced age mitigates your sentence. Furthermore, the court has been informed that due to your disability issues, you are unable to mobilise anywhere. You still require the assistance of your family members and relatives to assist you. Considering these factors, this Court is of the opinion that your current physical disabilities does not have any relevance to this sentence.

[24]. On the other hand, the Court is mindful of the fact that prison life will greatly have some impact on your life due to your current health and physical disabilities. You will also require special care once incarcerated. However, this court cannot turn a blind eye on your actions. You will need to be punished as a deterrent for other elderly ones to know that such actions cannot be tolerated at all.

Non-parole Period

[25]. In considering **section 18(1)** of the **Sentencing and Penalties Act, 2009**, I fix your term of **non-parole to 05 years imprisonment**.

Appeal Period

[26]. If any of the parties is not in agreement with the Court's decision, you have 30 days to appeal to the Court of Appeal.


Waleen M George
Acting Puisne Judge
HIGH COURT OF FIJI



Dated at Suva this 16th day of January, 2026.

Solicitors for the State: Office of the Director of Public Prosecutions, Suva
Solicitors for the Accused: Legal Aid Commission, Suva