

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 74 OF 2014**

**STATE**

**-v-**

**TAWAKE WAQABACA WAQALEVU**

**Counsel** : **Mr. J. Niudamu for State**  
**Accused tried in absentia**

**Date of Judgment** : **16<sup>th</sup> April, 2018**

**Date of Sentence** : **20<sup>th</sup> April, 2018**

*(Name of the Complainant is suppressed. She is referred to as AD)*

**SENTENCE**

1. Mr. TAWAKE WAQABACA WAQALEVU was charged on following information and tried *in absentia*.

***Statement of Offence***

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

### *Particulars of Offence*

**Tawake Waqabaca Waqalevu** on the 2<sup>nd</sup> day of June, 2014 at Naivuvuni, Rakiraki in the Western Division, penetrated the vagina of AD with his finger, and at the relevant time the said AD was under the age of 13 years.

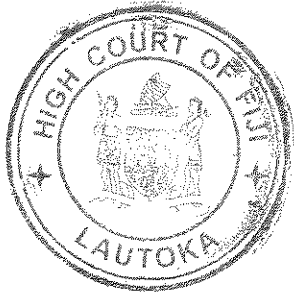
2. The victim was 6 years old at the time offence. The Accused, Tawake Waqabaca Waqalevu or Waqa is her uncle. He came for a visit at victim's house. Victim's grandmother told her to go to the river with uncle Waqa to have a bath. She went to the river with her siblings and uncle Waqa. She came back from river with uncle Waqa and her younger brother. As they were coming, uncle Waqa told her younger brother to take his stick house and make it run. After that Waqa made her lay down, covered her mouth and put his one finger in her vagina. It was painful. She was scared and crying. Then she ran to her mother and complained.
3. The maximum penalty for Rape is life imprisonment.
4. Tariff for juvenile rape is now well settled. The Supreme Court in Raj CAV003.2014 confirmed that the tariff for rape of a juvenile should be 10-16 years' imprisonment.
5. Rape of children is very prevalent in Fiji. Courts and the society cannot condone any form of sexual assault on children. Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.
6. The main purposes of this sentence are special and general deterrence and denunciation. However, I am mindful of offender's chances of rehabilitation.
7. The offender used force on a young child who placed much trust on him as her uncle. According to the Victim Impact Statement and the medical report, the victim has suffered physically and psychologically. The offending is very serious.


8. Having considered the seriousness of the offence and the harm caused to the young victim, I pick 11 years' imprisonment as the starting point.
9. Aggravating Circumstances
  - I. Victim's grandmother sent the victim to a bath in the river trusting the offender as victim's uncle. The offender breached that trust.
  - II. Victim was 6 years old when the offence was committed. The age gap between the offender and the victim is high.
  - III. The offender exploited vulnerability of a child.
10. I considered offender's mitigating circumstances although he is still on bench warrant. He has no previous convictions of similar nature.
11. I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 14 years' imprisonment. I deduct 10 months for the mitigating factor bringing the sentence to 13 years and 2 months imprisonment. The offender had been in remand for 57 days. I deduct further 2 months to reflect the remand period. The final sentence is 13 years' imprisonment.
12. The purposes of sentencing set out in Section 4(1) should be considered with particular reference to rehabilitation 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 rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent See: Tora v State [2015] FJSC 23; CAV11.2015 (22 October 2015). In view of the foregoing, I, acting under Section 18(1) of the Decree and the decision of Tora (supra), order that the offender shall not be eligible for parole until he has served a term of 10 years' imprisonment.

13. **Summary**

Tawake Waqabaca Waqalevu is sentenced to 13 years' imprisonment. He is eligible for parole after serving 10 years in prison. The sentence will start to run from the date of offender's arrest.

14. 30 days to appeal to the Fiji Court of Appeal.



  
Aruna Aluthge  
Judge

At Lautoka

20<sup>th</sup> April, 2018

**Counsel:** Office of the Director of Public Prosecution for State