

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 208 OF 2016**

**STATE**

**-v-**

**ILIKASIO TAULEKA**

**Counsel** : **Mr. J. Niudamu for State**  
: **Ms. K. Vulimainadave with Ms. Manueli for Accused**

**Date of Judgment** : **29<sup>th</sup> April, 2018**

**Date of Sentence** : **2<sup>nd</sup> May, 2018**

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

**SENTENCE**

1. Mr. ILIKASIO TAULEKA you were charged with one count of rape on the following information.

Charge Statement

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.

#### Particulars of Offence

ILIKASIO TAULEKA on the 6<sup>th</sup> day of October, 2016 at Rakiraki in the Western Division, penetrated the vagina of RK, an 8 year old girl, with his finger.


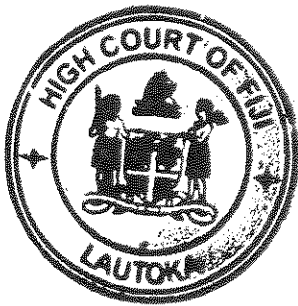
2. The facts of the case are that, on the 6<sup>th</sup> of October, 2016, the victim returned from school in the afternoon. While she was playing hide and seek with her cousin, you came and grabbed her hand and pulled her towards the creek. Then you took off her panty and inserted your index finger inside her vagina. She felt the pain and did not like what you did to her. You did not pay heed to her call to stop. You ran away from the scene when her grandmother started calling her. The victim started crying when she reached her grandmother and complained to her what you did to her. The victim was 8 years old at the time offence.
3. The maximum penalty for Rape is life imprisonment.
4. The 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. Your engagement in this unilateral sexual activity with a young girl is most abhorrent. Your act is bound to yield psychological trauma and adverse effects on the victim which cannot be assessed even by psychologists. Rape of children is very prevalent in Fiji. Children are the future of our nation. Courts and the society cannot condone any form of sexual assault on children and must be denounced to save little children for their own future. The courts are indeed expected under the Constitution to play a positive and proactive role to safeguard children. The rape offenders must be severely punished so as to send a clear warning to the society. The sentence must also reflect the gravity of the offence. In passing down your sentence, deterrence is therefore, of paramount importance. However, I am also mindful of your chances of rehabilitation.

6. You used force on a young child who placed trust on you as her grand uncle. According to the Victim Impact Statement, the victim has suffered psychologically. The medical report reveals that the victim has also suffered physically. Your offending is very serious. Having considered the seriousness of the offence and the harm caused to the young victim, I pick 11 years' imprisonment as the starting point.
7. Aggravating circumstances of your offence are that;
  - I. You are related to the victim as her grand uncle. You breached the trust as an adult relative.
  - II. You were 41 years old and the victim was 8 years old when the offence was committed. The age gap between you and the victim is more than 30 years.
  - III. You exploited child victim's vulnerability.
8. I considered the following mitigating circumstances filed by your Counsel.
  - I. You are a first offender. You have thus far maintained a clear record and a good character.
  - II. You are 43 years old farmer and you look after your elderly mother. The income you earn as a farmer is spent on two families as the only male income earner in your family.
  - III. You seek mercy of this court.
9. I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 14 years' imprisonment. I deduct 12 months for the mitigating factors bringing the sentence to 13 years' imprisonment. You had been in remand for nearly one month. I deduct further one month to reflect the remand period. Your final sentence is 12 years and 11 months' imprisonment.
10. I considered the purposes of sentencing set out in Section 4(1) 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 Sentencing and Penalties Act and the decision of *Tora* (supra), order that you shall not be eligible for parole until you have served a term of 10 years' imprisonment.

### Summary

11. You are sentenced to 12 years and 11 months' imprisonment. You are eligible for parole after serving 10 years in prison.
12. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge

Judge

At Lautoka

2<sup>nd</sup> May, 2018

Counsel: Office of the Director of Public Prosecution for State

Legal Aid Commission for Defence