

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 125 OF 2013S

STATE

VS

JOSAIA TUIDRAKI

Counsels : **Mr. Y. Prasad for State**
Ms. N. Nawasaitoga and Mr. M. Fesaitu for Accused

Hearings : **30th September, 1st and 2nd October, 2013**

Summing Up : **3rd October, 2013**

Judgment : **3rd October, 2013**

Sentence : **4th October, 2013**

SENTENCE

1. After a four days trial, the court, in a judgment delivered yesterday, found you guilty and convicted you of the following information:

Statement of Offence

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

Particulars of Offence

JOSAIA TUIDRAKI on the 16th day of March 2013, at Natauloa Nairai Levuka, in the Eastern Division had carnal knowledge of **M. L**, a child under the age of 13 years.

2. Briefly, the facts were as follows. At the time of the offence, you were 24 years old, while the female complainant was 9 years old. Prior to the offending, you lived in the complainant's parent's house, for the previous 4 years. The two of you were not blood related, but her parents took you into their house, and treated you as a son. You called both of them "mum" and "dad". While the 9 year old complainant was sleeping on 16th March 2013, in the early morning, you carried her to the bush. You tied her up. Later, you forcefully undress her. You committed various indecencies on her. Then you inserted three fingers into her vagina. She shouted, as a result of the pain. You threaten her to be quite, or you will kill her with a knife. You then forcefully inserted your penis into her vagina, and had sex with her for a while. You were later found guilty of rape after a trial.
3. The courts have repeatedly said before, and will say again that, the rape of a child is a very serious offence, and it treats this type of offence seriously. The law makers have prescribed the maximum penalty of life imprisonment for those found guilty of rape (section 207 (1) of the Crimes Decree 2009). Previous case laws had set the tariff for the rape of child, a sentence between 10 to 16 years imprisonment. The final sentence will depend on the aggravating and mitigation factors.
4. In this case, the aggravating factors, were as follows:
 - (i) Breach of Trust. The complainant's father took the accused into his family, and treated him as a son. In a sense, the child complainant was like a sister to him. They lived together as a family for 4 years. Little did the complainant's family know that the person they thought was a son, was planning to do the unthinkable by raping the 9 year old complainant. This was certainly a serious breach of trust.
 - (ii) Rape of a child. The courts have repeatedly condemned the rape of children. As had been previously said, our children are the future of our country. Those who violate them sexually must expect a severe prison sentence to atone for their misdeeds.

- (iii) When committing the offence, the accused used unnecessary violence, by threatening to kill the complainant with a kitchen knife, if she raised the alarm. Furthermore, he committed further indecencies on her, before raping her.
 - (iv) The complainant was seriously injured, as recorded in her medical report. Furthermore, her victim impact report showed this girl is suffering the psychological traumas that is often the consequences of this offence.
5. The mitigation factors were as follows:
- (i) At the age of 24 years, this is the accused's first offence;
 - (ii) He had been remanded in custody for approximately 6 months.
6. I start with a sentence of 14 years imprisonment. I add 3 years for the aggravating factors, making a total of 17 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 14 years imprisonment.
7. For raping the 9 year old female complainant, I sentence you, Josaia Tuidraki, to 14 years imprisonment, with a non-parole period of 13 years imprisonment, effective forthwith.
8. The child's complainant's name is permanently suppressed to protect her privacy.

Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for Accused : **Legal Aid Commission, Suva.**