

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 97 OF 2013**

STATE

-v-

VIJAY KUMAR

**Counsels** : Ms. K. Semisi for the State  
Mr. R. Kumar for the accused

**Date of Trial** : 8 November - 14 November 2013

**Date of Sentence** : 26 November 2013

(Name of the victim is suppressed. She is referred to as AS).

**SENTENCE**

1. The accused is before the Court for sentence, after being convicted of the following charge:

**Statement of Offence**

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

**Particulars of Offence**

**VIJAY KUMAR** on the 7<sup>th</sup> day of April 2013, at Nadi in the Western Division, penetrated the vagina of **AS**, an 8 year old girl, with his finger.

2. You pleaded not guilty to above charge. Following trial lasting five days in this Court, you were found guilty on above count against you.
3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur with the verdict of the assessors and found you guilty of the above charge.
4. The following facts were proven in evidence during the trial. The 8 year old victim is your granddaughter. On 7.4.2013, while the victim was sleeping you have put her on your lap and had inserted your finger in to her vagina. The victim had told you not to do it. Victim had started crying. Victim had pain in her vagina and told you not to do it. You had told her not to cry. She had stopped crying. Then you had made her wear her pants and put her to sleep.
5. You had no remorse for your above conduct.
6. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of His Lordship Mr. A.H.C.T. Gates in **State v Marawa**. [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
8. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed

*“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. 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. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”*

9. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 15 years.
10. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Madigan J held that:

*“Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

In this case 42 year old step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

11. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Nawana J held that:

*“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”*

12. It was held further by Nawana J that:

*“The accused had not shown any remorse or repentance. On the contrary, he relentlessly castigated the witnesses saying that they were making up a false allegation at the expense of the little girl to avenge an unsubstantiated previous incident of refusing a loan to MB’s mother. This added, in my view, insult to the injury. While court recognizes that the accused was entitled to advance any proposition in support of his case, court equally recognizes that it should show its displeasure by showing no mercy in the matter of sentence when such allegations are found to be totally ill-founded as in this case.”*

13. Considering the above, I commence your sentence at 11 years imprisonment for the charge of Rape.

14. Aggravating factors;

- (a) The victim was of a younger and tender age,
- (b) You had made the victim sexually active at a young age,

- (c) You had traumatized the life of the victim,
- (d) You failed to show any remorse for your actions and no repentance,
- (e) You breached the trust bestowed on you by the victim.

Considering all, I increase your sentence by 2 years now the sentence is 13 years imprisonment.

15. Mitigating circumstances

- (a) Family dependent on you and you have a 5 year old daughter who is asthmatic,
- (b) You are 57 years old and diabetic.

Considering all, I reduce 1 year from your sentence, now your sentence is 12 years imprisonment.

16. You were in remand from 9.4.2013 for a period of 7 months. I deduct that period from above sentence. Now your sentence is 11 years and 5 months.

17. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 10 years as non parole period.

**Summary**

18. You are sentenced to 11 years and 5 months imprisonment. You will not be eligible for parole until you complete serving 10 years of imprisonment.

19. Permanent DVRO issued against accused in respect of victim AS.

20. 30 days to appeal to Court of Appeal.

Sudharshana De Silva  
**JUDGE**

**At Lautoka  
26 November 2013**

**Solicitors : Office of the Director of Public Prosecution  
Legal Aid Commission for the Accused**