IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 126 OF 2013

STATE

-v-

SEREMAIA DELA

Counsels : **Mr. A. Singh for the State**

Mr. R. Kumar for the accused

Date of Sentence : **6 December 2013**

(Name of the victim is suppressed she is referred to as TL)

SENTENCE

1. You are charged as follows:

First Count
Statement of Offence

Rape: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

Seremaia Dela between the 1st day of January, 2012 and 31st day of December, 2012, at Nadelei Village, Vatukoula, Tavua in the Western Division, penetrated the vagina of TL, with his penis, without her consent.

Second Count
Statement of Offence

Rape: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

Seremaia Dela between the 1st day of January, 2012 and 31st day of December, 2012, on an occasion other than the one particularized in Count 1, at Nadelei Village, Vatukoula, Tavua in the Western Division, penetrated the vagina of TL, with his penis, without her consent.

Third Count
Statement of Offence

Sexual Assault: Contrary to Section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Seremaia Dela between the 1st day of January, 2012 and 31st day of December, 2012, on an occasion other than the one particularized in Count 1 and Count 2, at Nadelei Village, Vatukoula, Tavua in the Western Division, unlawfully and indecently licked the vagina of TL, without her consent.

2. On 28th November 2013, you pleaded guilty to all three charges against you and admitted the Summary of Facts on 4th December 2013.

3. The Summary of Facts submitted by the State Counsel states as follows:

Sometimes between the 1st day of January 2012 to the 31st day of December 2012, at Nadelei Village, Vatukoula, TL (hereinafter referred to as the **"Victim"**) was returning home at night after dropping his uncle's dinner, when suddenly Seremaia Dela (hereinafter referred to as the **"Accused"**) appeared from the flower bed beside the footpath grabbed her and dragged her to an empty house. The light from a nearby house enabled the victim to identify the accused. The accused then forcefully pushed the victim on the floor, removed her clothes, licked her vagina, inserted his erected penis into her vagina and had forcefully sexual intercourse.

The second incident occurred between the above mentioned dates when the victim was washing dishes in the kitchen when the accused entered the kitchen and forcefully pushed the victim on the floor, removed her clothes, licked her vagina, inserted his erected penis into her vagina and had forcefully sexual intercourse.

The third incident also happened between the abovementioned dates when the victim was sleeping on the bed inside her house after cleaning in the day time when the accused quietly entered the house. The victim could feel in her sleep that someone was trying to undress her and when she opened her eyes she saw the accused standing next

to her. The accused forcefully removed her clothes and started licking her vagina. The accused left the scene when he saw the victim's brother approaching the house.

This matter came to light when the victim revealed the incident to Cpl. Sainimili during the lecture session at the victim's school. The accused was arrested, interviewed under caution to which he admitted to committing the offence.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for two counts of Rape and one count of Sexual Assault and accordingly you are convicted for two counts under Section 207 (1) and (2) (a) of the Crimes Decree and one count under Section 210 (1) of the Crimes Decree respectively.

5. Accused **Seremaia Dela** you stand convicted for two counts of Rape and one count of Sexual Assault.

6. 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.

7. 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."*

8. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 15 years.

9. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 His Lordship Mr. Paul Madigan 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 step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

10. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 His Lordship Mr. Priynatha Nawana 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."

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

12. Aggravating factors;

(a) The victim was of a younger and tender age,
(b) Victim was subjected to more than one sexual act,
(c) You had made the victim sexually active at a young age,
(d) You had traumatized the life of the victim,

Considering all, I increase your sentence by 3 years, now the sentence is 16 years imprisonment.

13. For the guilty plea, I deduct 3 years and now your sentence is 13 years.

14. Mitigating circumstances:

(a) You are first offender at the age of 38 years until you were convicted and sentenced by this Court on 29.11.2013.

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

15. You were in remand from 12.6.2013 for a period of 5 months. That period was deducted in the sentence HAC 125/2013.

16. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 11 years as non parole period.

17. The maximum penalty for the offence of Sexual Assault is 14 years imprisonment.

18. The tariff for the offence of Sexual Assault is between 2 to 8 years imprisonment as decided in ***Abdul Khaiyum*** HAC 160/2010 by Hon. Mr. Justice Paul Madigan.

19. I start the sentence for charge of sexual assault at 2 years and add 2 years for the aggravating factors mentioned above and deduct 1 year for the mitigating factors.

20. For charge of sexual assault, I sentence you for a period of 3 years with a non parole period of 2 years.

21. Your sentences are as follows:

(i)	1st count of Rape	-	12 years
(ii)	2nd count of Rape	-	12 years
(iii)	3rd count of Sexual assault	-	3 years

22. The Fiji Court of Appeal in **Vukitoga v State** [2013] FJCA 19; AAU 0049.2008 (13 March 2013) cited with approval the following citation of D.A. Thomas, Principles of Sentencing (2nd edition, 1979) p. 56-57 which was cited in High Court of Australia judgment **Mill v The Queen** [1988] HCA 70:

"*The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong'; "when… cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the*

sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences."

23. Considering the totality principle, I order the sentences of all three charges to run concurrently.

24. Further you are already serving a sentence of 11 years 7 months given to you on 29.11.2013. You have pleaded guilty to all the charges in five separate similar cases. If separate sentences are given for each of these cases, it will have a crushing effect on you. The State had conceded this position. Thus I order this sentence to run concurrently with the sentences you are already serving.

25. There was report from psychiatrist Victor Herald Wasson that you are fit to plea. The doctor was called to give evidence. According to him you had schizophrenia. Now you are treated and fit to plea. Further such treatment could be continued while you are in remand. Once you are served the term, a community treatment order could be issued if needed.

Summary

26. You are sentenced to 12 years imprisonment. You will not be eligible for parole until you complete serving 11 years of imprisonment. This sentence to run concurrently with other sentences already ordered.

27. Prison authorities are directed to continue with the treatment of you acting under Section 86 (1) & (2) of the Mental Health Decree, 2010.

28. 30 days to appeal to Court of Appeal.

Sudharshana De Silva
JUDGE

AT LAUTOKA
On 06th December 2013

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