

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION.

Criminal Case No. HAC 63 of 2013

BETWEEN

STATE

AND

KITIONE KAMIKAMICA

BEFORE THE HON. JUSTICE PAUL K. MADIGAN

Counsel: Ms. A. Vavadakua for the State  
Mr. J. Savou (L.A.C.) for the accused

Dates of hearing: 14 & 15 April 2014  
Date of summing up: 15 April 2014  
Date of judgment: 16 April 2014  
Date of sentence: 16 April 2014

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**SENTENCE**

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The accused has been convicted by this Court after trial of one count of rape contrary to section 207 (1) and 2 (a) and (3) of the Crimes Decree 2009.

The charge read :

First Count

**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


**KITIONE KAMIKAMICA** between the 23<sup>rd</sup> day of January 2012 and the 27<sup>th</sup> day of April 2012, at Nausori Village, in the Central Division, had carnal knowledge of **JOANA VAKARURU VOSA**, a child under the age of 13 years.

- [1] The facts of the case revealed at trial were that in the first few months of 2012, the victim a 9 year old girl was home alone with her younger sister and the accused her cousin, aged 20. The accused pulled the girl into the toilet and secured the door with a nail catch. He undressed her and after an unsuccessful attempt to have her mount him seated on the toilet, he then spread her skirt on the floor undressed himself and penetrated her. The girl told the Court she was scared and didn't tell anybody until the end of the year when she told her older cousin and as a result mother came to know and a report was made to the Police
- [2] The accused is now 21 years old, with a clear record and is a seminarian at the Methodist Lotu Bible School. He is the eldest child of the family and I am told that he is extremely remorseful and is taking steps to rectify his moral wrong. He insists that he poses no further threat to the victim or to her peers. His counsel asks that I not impose a minimum term on him given his youth and his clear record.
- [3] The maximum penalty for the offence is life imprisonment and the Court of Appeal has recently confirmed the tariff for rape of children to be a term of imprisonment of 10 to 15 years imprisonment. (Anand Abhay Raj AAU 0038.2010 (5 March 2014)). The Court said in the Raj case:

*"Although rapes of children are bad enough it is even more abhorrent that many of the perpetrators of these crimes are family members or other persons in a position of trust".*

- [4] This being a case of domestic violence. I am constrained to consider the provisions of section 4(3) of the Sentencing and Penalties Decree 2009 when assessing the appropriate sentence. I therefore have regard to the young age of the victim, the inevitable psychological effect the crime will have on her. I have regard to the responsibility the accused has taken for the offence, his remorse and his promise to the Court through his counsel that he no longer poses a threat to the victim or to her siblings.
- [5] To reflect the young age of the victim (9 years) I take a starting point of 12 years imprisonment. For the obvious breach of trust and inevitable psychological damage to the child I add four years to that total making an interim total of 16 years imprisonment. For the accused clear record, his youth, his stated remorse and the responsibility he has taken for the offending I deduct three years bringing the sentence back to 13 years' imprisonment.
- [6] Counsel for the accused submits that no minimum term be imposed given his client's youth and clear record however the Court must have regard to the nature of the offence, which being rape of child, is an offence held to be particularly heinous by our Courts. As a result I cannot accede to his submission. I fix a minimum term that the accused shall serve to be one of eleven years imprisonment.
- [7] Sentence: 13 years imprisonment  
11 years before being eligible for parole.

[8] As a precaution, I make a domestic violence restraining order against the accused as perpetrator and the victim of this rape the protected person, such order to remain in place until further order of this court.



P.K. Madigan  
Judge



At Suva

16/04/2014