

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

**Criminal Case No: HAC 74 of 2013**

**BETWEEN:**

**THE STATE**

**AND:**

**HENRY FISHER**

**Counsel** : Ms P. Low for State  
Ms M. Tarai for Accused

**Date of Hearing** : 30 June - 2 July 2014

**Date of Sentence** : 3 July 2014

**SENTENCE**

- [1] Henry Fisher, you appear before this Court for sentence, after being convicted of two counts of rape. The first count concerns digital rape while the second count concerns penile rape. The offences were committed on two separate occasions in Yadua Island, Bua. You resided in Vakasa settlement with your wife and five children in a house provided by your employer. In the beginning of the first school term in 2011, the victim who was your niece came and resided with you and your family. Your wife Susana Vaseva gave evidence that both of you took responsibility to send the victim to a school and to educate her. At the time, the victim was 10 years old and was attending a primary school in the island.
- [2] The first incident of digital rape occurred at nighttime while the victim was asleep with you and your wife. You inserted your fingers inside the victim's vagina. She said she felt pain and started crying. You warned

the victim not to tell anyone about the incident. The second incident of penile rape occurred during daytime when you found the victim alone at your home. You undressed her and inserted your penis inside her vagina. The victim said she did not report the incidents to her aunty because she feared her aunty would not believe her.

- [3] You were the victim's guardian and an authority figure when you sexually violated her. The victim's parents entrusted their daughter to you for care and protection. You breached the trust of the victim and her parents. The victim's tender age made her vulnerable. The first incident occurred shortly after the victim moved in to live with you and your family. The second incident occurred later in the first school term. The vulnerability of the victim due to her tender age, the breach of trust and the repeated rape are the aggravating factors in this case.
- [4] I accept that you did not use any physical violence on the victim. The State did not lead any evidence of victim impact. However, when the victim gave evidence, the psychological trauma became apparent when she broke down in tears on numerous occasions.
- [5] The only compelling mitigating factor is your previous good character. You are 47 years old and married with five children. You also have two other children out of wedlock who you support. You also support your 80-year old mother who lives on her own. Your wife and children are financially depended on you. You were supporting your family through your employment as a boat captain for a diving business. You have attained up to class 7 primary level education. The sentence will have an impact on your employment and your family. Your wife and children will have to move out from the house they are currently occupying and manage without any regular source of income. Your previous good character and personal and family circumstances are the mitigating factors in this case.

- [6] However, sexual offences against children are becoming too prevalent in our society especially in our rural communities where the children are more vulnerable because the perpetrators hold positions of authority. The courts have a duty to protect the most vulnerable members of our society and to impose sentence that reflects society's disapproval of the offence.
- [7] In cases of rape of a child, the tariff is between 10 to 14 years imprisonment (*Mutch v State*, Cr. App. AAU0060/99, *Mani v State*, Cr. App. No. HAA0053/02L, *State v Saitava*, Cr. Case No. HAC10/07, *State v Marawa*, Cr. Case No. 016/03, *Drotini v State*, Cr. App. AAU001/05 and *State v Tony*, Cr. App. No. HAA003/08).
- [8] I pick 10 years as my starting point. I increase the sentence to 14 years to reflect the aggravating factors and reduce 2 years and 5 months to reflect the mitigating factors. You were in custody on remand for nearly 7 months. I further reduce your sentence by 7 months to reflect the remand period.
- [9] On each count of rape, I sentence you to 11 years' imprisonment with a non-parole period of 8 years, to be served concurrently.

  
Daniel Goundar  
**JUDGE**



At Labasa  
3 July 2014

**Solicitors:**

Office of the Director of Public Prosecutions for State  
Office of the Director of Legal Aid Commission for Accused