

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

**Criminal Case No. 143 of 2014**

**STATE**

**v**

**ELIKI TURAGANABORISI**

Counsel: Ms. A. Vavadakua for the State

Mr. M. Fesaitu (L.A.C.) for the Accused.

Dates of hearing: 16 May, 14 July 2014

Date of Sentence: 18 July 2014

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**SENTENCE**

(Rape of a child)

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1. On the 6<sup>th</sup> December 2013 in the Magistrates' Court at Suva, the accused was found guilty of and convicted of one count of Rape. The Learned Magistrate then transferred the case to this court for sentencing under section 190(1)(b) of the Criminal Procedure Decree 2009.

## Facts

2. The facts of the case were that on the 29<sup>th</sup> November 2007, Sally (not her real name) aged 8 years old was asleep on the floor of her home when she felt herself being lifted and carried outside. She was laid on the grass "near the kavika tree". The person then "put his polo into her mimi" . It was very painful and he did this for quite some time. Sally said that the person who did this was "Papa" a person she identified as the accused at trial.
3. The mother of the victim had put the 4 children to bed that night, locked the door and had gone to church, which was about 30 metres away. She had left at 11pm and returned just after midnight. She saw that the door was open and that Sally was not there. She and her husband searched frantically and found her at about 2am. Her clothes were very muddy and there was blood dripping down her legs. Sally told her parents that Papa had done these things to her. She was unable to walk so her father carried her to the Police Station to report the matter.
4. Sally was taken to Navua Hospital where she was referred to CWM in Suva. In a comprehensive report detailing repeated operations to correct severe vaginal and anal injuries leading to tears between her vagina and anus , the Doctor summarized the medical situation in the following way:

*"In summary Sally has suffered severe vaginal and anal injuries from an incident of sexual abuse. She has also been psychologically traumatised by the incident. In my opinion the psychological trauma had contributed to her inability to attend on-going review after initial admission and surgery, Over the 7 years after her rape the abnormal anatomy resulting from the breakdown in her*

*initial sexual repair has resulted in anal incontinence and recurrent urinary tract infection. The symptoms of these two conditions and her recurrent flashback episodes resulted in poor school attendance and difficulty in social interactions. Whilst her recent surgery will help her with her physical symptoms she will need ongoing psychiatric consultations and management to help her overcome the psychological trauma of her sexual abuse.”*

5. The accused made a full and detailed confession in his caution interview. He said that he had been drinking in Navua that day and that he then “wanted a girl”. He had gained entry to the house by forcing a window, had taken the girl to an empty lot and had removed her trousers and panty before she woke up. He then stopped her mouth with one hand and used two fingers to invade her. He spread her legs lay on top of her and raped her. He said he saw that she was in pain and that there was a lot of blood but he kept on to satisfy his lust. After ejaculating he stood up, dressed and walked away, leaving Sally on the ground.

#### **The Law**

6. The maximum penalty for rape is imprisonment for life and the Court of Appeal has recently said in ***Anand Abhay Raj*** AAU0038 of 2010 that the tariff for rape of a child is between 10 and 16 years.

#### **The Accused**

7. At the time of the offence, the accused was 24 years old. He is now 31, married with an 8 month old child. He worked as a farmer of root crops. He has been in custody since conviction, a



period of 7 months. He had been in remand for 1 month prior to conviction.

8. The accused has 8 previous convictions, mostly for dishonesty and none similar. These convictions however will deny him credit for good character.

### **Aggravating Features**

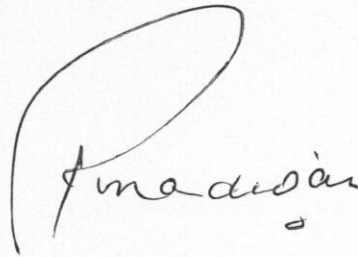
9. It is seriously aggravating that the accused had raped the child with such violence that she had to be operated on to repair a shocking tear between her vagina and anus and even then she was rendered partially incontinent, requiring further procedures a few years later. The Doctor opines that she is psychologically damaged and she has become socially withdrawn.
10. It is also aggravating that she should be removed from the security of her own home at night and taken to (and abandoned in) nearby waste land.

### **The Sentence**

11. The facts of this case reveal an appalling incident of wanton lust, violent sexual attack and a disinterested abandonment of the child when the accused had satisfied that lust.
12. I take a starting point of 16 years for this horrific crime. For the aggravating features already referred to above I add four years to the starting point, bringing the sentence to an interim total of 20 years. I am aware that it is a high starting point and that I have in addition added time for aggravating features but the damage done to a young girl both psychologically and physically is so great that the "double time" is warranted. He has little to offer in

mitigation, apart from his relative youth at the time and his own young family and for those circumstances I deduct 1 year.

13. For the plea of guilty I deduct a period of 4 years and for the time spent in custody awaiting this sentence I deduct one year.
14. The accused will serve a total sentence for this crime of 14 years. He will serve a minimum term of 13 years before being eligible for parole.



**P.K. Madigan**  
**Judge**

