

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION.

Criminal Case No. HAC 216 of 2014

BETWEEN

STATE

AND

JONE TUICAKAU

BEFORE THE HON. JUSTICE PAUL MADIGAN

Counsels: Ms. A. Vavadakua for the State
Mr. M. Fesaitu (L.A.C.) for the accused

Dates of hearing: 1, 27 August 2014, 25 September & 9 October 2014

Date of sentence: 21 October 2014

SENTENCE

On the 25th September 2014 in this Court the accused entered pleas of guilty to the following counts:

First Count

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (c) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE TUICAKAU between the 1st day of December 2012 and the 31st day of December 2012, at Levuka, in the Central Division, penetrated the mouth of XXX, a child under the age of 13 years, with his penis.

Second Count

Statement of Offence

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

Particulars of Offence

JONE TUICAKAU between the 1st day of December 2012 and the 31st day of December 2012, at Levuka, in the Central Division, had carnal knowledge of XXX, a child under the age of 13 years

Third Count

Statement of Offence

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

Particulars of Offence

JONE TUICAKAU, between the 1st day of August 2013 and the 31st day of August 2013, at Levuka in the Central Division, had carnal knowledge of XXX, a child under the age of 13 years.

[2] On his agreement to the facts he was convicted on each count.

- [3] The facts of the case are that the accused at the time of the offences was 40 years of age.
- [4] "Alice" (not her real name), the victim was at the time was 11 years old and at primary school. They lived in the same house, the accused being married to Alice's grandmother, so to all intents and purposes he was her grandfather. At the time Alice's mother had left and gone to the Lau group and she doesn't know who her father is.
- [5] One day in the month of December 2012 the accused called Alice into his bedroom on the pretext of showing her something. When she approached he quickly removed her clothes and he then forced her to perform an act of oral sex on him. He then immediately made her lie on the bed – he spread her legs and penetrated her with his penis. Alice asked him to stop because she was in pain but he continued his actions. He then told her to dress and not to tell anybody.
- [6] On a day in August 2013, in the middle of the day, Alice returned to the house from church and only the accused was at home. He called her into the bedroom where he immediately exposed his penis to her. He undressed the girl and made her lie on the bed. He then, using coconut oil, lubricated her vagina and again penetrated her with his penis. Afterwards he told her to dress and not tell anybody.
- [7] When interviewed under caution the accused stated that the child had been living with them for 8 years. He acknowledged that she would have been only 11 years old in 2012, below the age of legislative consent. He said he had sex with her because she looked "pretty".
- [8] In a written plea of mitigation, counsel for the accused tells me that he is now 42 and unmarried. He has been in a de facto relationship and has made a

living by farming and selling root crops. He would earn around \$80 per week. At times he would work as a casual worker in a factory earning \$50 per week. He has had no previous convictions which will entitle him to a reduction for a crime free life hitherto. Counsel reminds me that he co-operated with the authorities and he is said to be remorseful, remorse which is evidenced by his plea.

- [9] The Court of Appeal has recently held that rape of juveniles (under 18) must attract sentences of at least 10 years and the accepted range is a sentence of between 10 and 16 years. (Anand Abhay Raj AAU0083.2010) upheld by the Supreme Court in A.A. Raj (CAV003 of 2014).
- [10] It is an aggravating feature in this case that the accused has breached the trust that the girl must have had for her "grandfather" and that as a result she was not safe in her own home. The differences in ages (42 vs. 11) is enormous and although there was no violence or injury to the girl, she was physically forced to perform these acts of fellatio and sexual intercourse.
- [11] I take a starting point for these rapes of 10 years imprisonment. For the breach of trust referred to I add a further term of 5 years. For the age difference and the violation of her "peace at home" I add a further two years making an interim total of 17 years. For his clear record and time spent in custody awaiting trial (2½ months) - I deduct one year leaving 16 years. Although the plea was not at the first opportunity, he did admit the allegations to the Police and when first legally advised he entered his pleas of guilty before this Court. That is much to his credit because it not only saves the Court's time and expense it saves a young girl from re-living the trauma of the events which must have already caused her much psychological stress. For these considerations I deduct 5 years from the interim sentence meaning that the accused will serve a total term of eleven years. He will serve a minimum of ten years before being eligible for parole.

[12] This is the sentence for each of the three rapes and they are to be served concurrently with each other.



A handwritten signature in black ink, appearing to read "P. Madigan", written in a cursive style.

P.K. Madigan
Judge

At Suva
21/10/2014