

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 106 OF 2013S

STATE

vs

RITESH PRASAD

Counsels : **Ms. V. Prasad for the State**
Mr. K. Singh for Accused

Hearings : **17 and 18 November, 2014**

Summing Up : **19 November, 2014**

Judgment : **19 November, 2014**

Sentence : **21 November, 2014**

SENTENCE

1. In a judgment delivered on 19 November 2014, you were found not guilty of raping the complainant on 14 November 2012 at Nausori in the Central Division. You were acquitted accordingly. However, the court found you guilty of an alternative charge of sexually assaulting the complainant on 14 November 2014 at Nausori in the Central Division. You were convicted accordingly.
2. The brief facts were as follows. You were 24 years old at the time, single with no children. Your parents were separated. You lived with your father. The complainant was 10 years old, and lived with her parents and a younger sister. The complainant was in fact, your niece. On 14 November 2012, you force her into their toilet and fiddle with and/or touched her vagina. It was said, you also kissed her on the lips.

3. "Sexual Assault" as an offence, carries a maximum penalty of 10 years imprisonment. The tariff is a sentence between 2 to 8 years imprisonment: see State v Epeli Ratabacaca Laca, HAC 252 of 2011S, High Court, Suva. Of course, the final sentence will depend on the mitigating and aggravating factors.
4. The aggravating factors in this case were as follows:
 - (i) Breach of Trust. The 10 year old complainant was your niece. You were her uncle. As such, you were supposed to look after her, and care for her. Instead, you abused the trust she had in you, and you secretly sexually assaulted her by fondling and touching her vagina;
 - (ii) Your sexual assault involved a child, and the court had repeatedly said that, it will act to protect the most vulnerable in society, by passing an educational deterrent sentence, to warn other would-be offenders;
 - (iii) You showed no remorse throughout the proceeding, and you had to make the complainant re-live her ordeal in the courtroom, by giving evidence.
5. The mitigating factors were as follows:
 - (i) At the age of 26 years, this is your first offence;
 - (ii) You have been remanded in custody since 13 March 2013, that is, 1 year 8 months ago.
6. I start with a sentence of 5 years imprisonment. I add 2 years for the aggravating factors, making a total of 7 years imprisonment. I deduct 1 year 8 months for the time you have been remanded in custody, leaving a balance of 5 years 4 months. I deduct a further 1 year 4 months from the above, to take into account your previous good character. The balance is now 4 years imprisonment.
7. Mr. Ritesh Prasad, for sexually assaulting your 10 year old niece, I sentence you to 4 years imprisonment, with a non-parole period of 3 years imprisonment, effective forthwith.
8. The complainant's name is permanently suppressed to protect her privacy.



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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **K. S. Lawyers, Barristers and Solicitors, Suva.**