

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 162 of 2013

STATE

V

KANEA NAUA

Counsel: Ms P. Madanavosa for the State.
Ms M. Tarai (L.A.C.) for the accused.

Dates of trial: 18, 19 February 2015.
Date of Sentence: 23 February 2015.

SENTENCE

The accused was tried in this Court on the following two counts:

FIRST COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1)(a) of
the Crimes Decree 44 of 2009.

Particulars of Offence

Kanea Naua between the 1st day of January and the 31st of December 2010 at Valelevu, in the Central Division unlawfully and indecently assaulted XXXXX.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

Kanea Naua between the 1st day of January and the 31st day of December 2010 at Valelevu, in the Central Division had inserted his finger into the vagina of XXX an 8 year old child.

2. He was convicted of both counts after trial.
3. The facts of the case were that on an unknown day of year 2010, the victim ("Doreen" – not her real name) visited the accused's house to fetch water. The accused was a neighbour and related to the girl by marriage.
4. The accused was seemingly alone and asked Doreen to sit on his lap. He then proceeded to put his hands in her pants, fondled her genitals and penetrated her with his forefinger, which is rape. He kissed and licked her mouth and fondled her breasts. The girl ran home but went back again a second time when her father told her to fetch more water. She was again sexually abused by the accused. At the time the girl was 7 years old, and therefore unable to consent to these actions. She eventually told her maternal aunt what had happened who told the mother and the Police were informed. The accused was

arrested and admitted the deeds saying that he was drunk and didn't know what he was doing.

Mitigation

5. Counsel for the accused stresses that her client is about to turn 62 years of age and that his age should be considered by the Court. He has a clear record and some credit must be given to him for that. He is the sole provider for his family and he has two children in secondary school, both of whom he is supporting. He suffers from arthritis especially in the colder weather. He was born in Kiribati and only came to Fiji when aged 20 to better himself, coming from a poor and disadvantaged background in Kiribati.

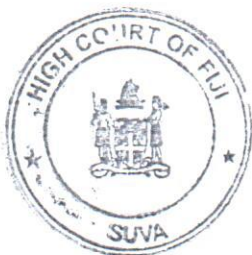
Sentence

6. Rape of a child, and that includes finger penetration, attracts a sentence of between 10 and 16 years (authorized by the Supreme Court in **Anand Abhay Raj**, CAV 003 of 2014)
7. Sexual assault has a maximum term of 10 years and as this Court said in **Abdul Kaiyum**, HAC 160/10 the tariff is between 2 to 8 years with the maximum reserved for contact between the mouth and genitalia or anus of another. This sexual assault being hand on genitals and breasts attracts a "Category 2" sentence of 5 to 6 years.
8. There are aggravating features in this case being the :
 - Taking advantage of a vulnerable child and the abuse of trust by a relative. The age difference of 49 years is also an aggravating feature.

9. For the rape offence which is the most serious I take a starting point of 12 years. For the aggravating features mentioned above I add four years. For his mitigation of a family to support and the difficulties he might face in prison with age and arthritis I deduct two years. I deduct one year for his clear record, leaving a total of 13 years. He has spent 4 months in custody awaiting trial and that too must be deducted.

10. For the sexual assault count, I take a starting point of 5 years and would add 2 years for the aggravating features of abuse of trust and large age difference. I deduct 2 years for the clear record and mitigating circumstances. The sentence of five years will be served concurrently with the rape sentence.

11. The final sentence the accused must serve is one of 12 years and eight months with a minimum term before being considered for parole of ten years.



At Suva
23 February, 2015

A handwritten signature in black ink, appearing to read "P.K. Madigan". The signature is fluid and cursive, with a large initial "P" and a small "d" at the end.

P.K. Madigan
Judge