

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

**CRIMINAL CASE NO.: HAC 150 OF 2014**

**STATE**

**-v-**

**SEMI SEAVULA**

**Counsels : Mr. Aman Datt for the State**  
**The accused in person**

**Date of Sentence : 26 February 2015**  
(Name of the victim is suppressed she is referred to as AN)

**SENTENCE**

1. You are charged as follows:

**COUNT 1**  
**Statement of Offence**

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

**Particulars of Offence**

**SEMI SEAVULA**, sometime between the 22<sup>nd</sup> day of May 2011 and the 28<sup>th</sup> day of May 2011, at Nadelei, Vatukoula, in the Western Division, had carnal knowledge of **AN**, and at the relevant time the said **AN** was under the age of 13 years.

2. On 23<sup>rd</sup> January 2015 you pleaded guilty to above charge against you and admitted the Summary of Facts on the next day 2<sup>nd</sup> February 2015.
3. The Summary of Facts submitted by the State Counsel states as follows:

AN, around 12 years old at the time [DOB 26/05/99], Student, of Nadelei Village, Vatukoula, Tavua ("the victim") is the niece of Semi Seavula, 41 years old, Cane harvester, of Nadelei Village, Vatukoula, Tavua ("the defendant").

In May 2011, both the victim and the defendant were residing at Nadelei Village. The victim was staying there with her parents and siblings. She was a Class 6 student at Nadelei Catholic School.

Sometimes between 22<sup>nd</sup> and 28<sup>th</sup> May 2011, the victim was returning home from school. Her other siblings had walked ahead of her hence the victim was walking alone. Before the victim reached home, she met the defendant sitting under a mango tree beside the road.

The victim kept walking past him. Suddenly the defendant ran after the victim, covered her mouth by pressing on it, and dragged the victim into a nearby bush. The defendant pulled the victim's panty down with one hand whilst holding her tightly with the other hand. He then threatened the victim not to shout or he will punch her. The victim got scared and obliged.

The defendant then made the victim lie on the ground and took off his clothes. He lay on top of the victim, lifted her leg, and inserted his erected penis into the victim's vagina. The defendant forcefully penetrated the victim's vagina with his erected penis several times, without her consent. The episode lasted for about 2 minutes. The victim was in pain afterwards.

The defendant then stood up and warned the victim not to tell anyone about the incident. He then went away. The victim slowly got up, got dressed, and then went home. She did not tell her parents about the incident as she was scared of the defendant.

In 2014, upon inquiries from family members, the victim told her mother, aged 41 years, and her father, aged 49 years, about the incident. The matter was then reported to the police. The victim was medically examined on 3<sup>rd</sup> March 2014 where the doctor noted that there were "no outer vaginal injuries" and "hymen not intact".

The defendant was cautioned interview in which he admitted, from Q23 to Q32, that the defendant knew the victim and on the day in question he had grabbed the victim and had sexual intercourse with her. The defendant also admitted that he threatened the victim. At Q52 the defendant sought forgiveness for what he had done.

The accused was later charged with one count of 'Rape' contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009. On 23 January 2015, the defendant pleaded guilty to the charge after waiving his right to counsel.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for one count of Rape under Section 207 (1) and (2) (a) of the Crimes Decree .
5. Accused **Semi Seavula** you stand convicted for one count of Rape.
6. According to the Crimes Decree, the maximum punishment for rape is Imprisonment for life. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of Hon. Mr. Justice A.H.C.T. Gates in **State v Marawa**. [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
8. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

*“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”*

9. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 16 years. It was held by Court of Appeal in **Raj v State** [2014] FJCA 18; AAU0038.2010 (5.3.2014) Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years. This was upheld by the Supreme Court.
10. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Hon. Mr. Justice Paul Madigan held that:

*“Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

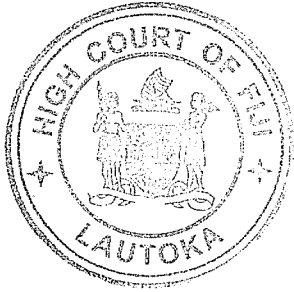
11. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Hon. Mr. Justice Priyantha Nawana held that:


*"The accused's engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB's standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and assess even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused's caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance."*

12. Considering the above, I commence your sentence at 12 years imprisonment for the charge of Rape.
13. The aggravating factors are:
  - (i) Serious breach of trust by the victim towards you as uncle and niece
  - (ii) Victim is of young age the age gap is about 26 years
  - (iii) The emotional suffering of the victim
14. I add four years for above aggravating factors. Now your sentence is 16 years.
15. The mitigating factors are:
  - (i) At the age of 42 you are first offender
  - (ii) You fully co-operated with the police investigation
  - (iii) Asked for the forgiveness of the court
16. I deduct 1 year for the above mitigating factor. Now the sentence is 15 years.
17. I deduct 1/3 of the sentence for the guilty plea. Now your sentence is 10 years.
18. You were in remand from 6.11.2014 to 10.12.2014 for a period of 1 month. That period to be deducted from your sentence acting under Section 24 of the Sentencing and Penalties Decree. Now your sentence is 9 years 11 months.
19. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 8 years as non- parole period.
20. Your sentence is as follows:
  - (i) Count of Rape - 9 years 11 months

**Summary**

21. You are sentenced to 9 years 11 months imprisonment. You will not be eligible for parole until you complete serving 8 years of imprisonment.
22. 30 days to appeal to Court of Appeal.



  
Sudharshana De Silva  
**JUDGE**

At Lautoka  
26<sup>th</sup> February 2015

Solicitors: Office of the Director of Public Prosecution for the State  
The accused in person