

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. : HAC 75 OF 2012**

**STATE**

**-v-**

**JONETANI CORIVUKA**

**Counsel :** **Ms. L. Latu for the State**  
**Accused in Person**

**Date of Judgment:** **06<sup>th</sup> October, 2105**  
**Date of hearing:** **20th October, 2015**  
**Date of Sentence:** **21<sup>st</sup> October, 2015**

**Sentence**

[1]. The Accused was charge with following Counts and tried before three Assessors.

[2].

**First Count**  
***Statement of Offence***

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

***Particulars of Offence***

**JONETANI CORIVUKA** between the 1st day of January 2012 and the 30th day of April 2012 at Ba in the Western Division penetrated the anus of KK a ten year old child, with his penis.

**Second Count**  
***Statement of Offence***

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

### **Particulars of Offence**

**JONETANI CORIVUKA** on the 14th of May 2012 at Ba, in the Western Division, penetrated the anus of KK a ten year old child, with his penis.

- [3]. Assessors unanimously found the Accused not guilty of the first count and found him guilty of the second count.
- [4]. This Court rejected the opinion of the Assessors and found Mr. Jonetani Corivuka (accused) guilty of lesser count of Sexual Assault and was convicted accordingly.
- [5]. Brief facts of the case are as follows:

Victim, a ten year old boy went into a sugarcane field with his friends looking for a chicken. He approached the accused, a known neighbour, to get sugarcane cut for him. Accused took victim to another sugarcane field, made him sit on a rock, undressed and "put his balls on victim's back side". Accused discharged sperms on ejaculation. Having done so, accused warned the victim not to report the incident to anyone.

Doctor who examined the victim on the following day observed reddening around victim's anal opening. He had not seen any bruises or lacerations. In his conclusions, Doctor opined "it is very difficult to prove that anal intercourse did happen or not since the time of presentation to me was late for further examination".

- [6]. According to the mitigation submission filed by the Counsel, Accused is 49 year old father with five children. He was employed as a security guard.
- [7]. "Sexual Assault" carries a maximum sentence of 10 years imprisonment. In **State v Epeli Ratabacaca Laca**, HAC 252 of 2011, Justice Paul Madigan set the tariff for the offence between 2 and 8 years imprisonment, the higher tariff being set for serious sexual assaults.
- [8]. Having considered the ~~said~~ Legal Guidelines for Sentencing in the United Kingdom, Justice Madigan in the case of **Epeli Ratabacaca** (*supra*) has divided Sexual Assault offending into three (3) categories.

#### **Category 1 (the most serious)**

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.



## **Category 2**

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;
- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

## **Category 3**

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

- [9]. Rubbing the anal area with penis comes within Category 2(i) mentioned above.
- [10]. It is evident that no tariff has been set for the offence of Sexual Assault when the victim is a child. Section 7 of the Sexual Offences Act 2003 of the United Kingdom identifies sexual assault on children under 13 years in a special category with a penalty attracting maximum of 14 years imprisonment.
- [11]. After a careful consideration of the legal background on sentencing for the offences of Sexual Assault, I now turn to identify the aggravating and mitigating factors in this case.

### **[12]. Aggravating factors**

- I. Victim being a child in itself is an aggravating factor. Mr. Jonetani has exploited vulnerability of the victim to satisfy his lust.
- II. The age gap between the offender and the victim aggravates the background of offending. The victim was 10 years of age whilst the offender was 47 years old at the time of the offending. The age gap was 37 years.
- III. Accused is a neighbour of the victim. Victim, no doubt, trusted the offender when he went to him seeking sugarcane. Accused had betrayed that trust.
- IV. The Medical Examination Report and the Victim Impact Statement show that the victim has been physically and mentally affected by the act of the Accused. Accused's warning

to the victim and the ejaculation in front a child also aggravated offending.

[13]. **Mitigating Factors**

- I. Mr. Jonetani has no record of previous convictions.
- II. He has cooperated with the Police during investigations.

[14]. **Sentence**

Having considered the degree of culpability and the circumstances existed at the time of offending, I take a starting point of 5 years imprisonment. I add 3 years for all the aggravating factors mentioned earlier and deduct eighteen months for all the mitigating factors. Taking into consideration the time he had spent in remand, I further reduce eighteen months from his interim sentence. **His final sentence is five years imprisonment.**

- [15]. Accused through his Counsel asks for leniency on account of his clear record and family commitments.

Justice Madigan has noted in **Epeli Ratabacaca Laca** (*supra*):

*“such leniency can only be afforded to a convict who expresses remorse by way of a guilty plea or some other expression of regret.”*


There is none in this case.

- [16]. This is not a fit and proper case for a Court of law to be mellowed with sympathy. It is rather unfortunate to note that the respect for children in the society is on the decline and incidents of sexual molestation are steadily growing. The administration of criminal justice system has to be strict and firm on those who violate the social norms. The sentence must reflect the public outrage against such crimes and demand for secure society for young generation. Thus, Mr. Jonetani will receive an immediate custodial sentence.

- [17]. Having considered Mr. Jonetani's clean record I fix the non-parole period at three years. He is eligible for parole after three years of imprisonment.

- [18]. 30 days to Appeal to the Fiji Court of Appeal.



  
**Aruna Aluthge**  
Judge



**At Lautoka**  
**21<sup>st</sup> October, 2015**

**Counsel:**

- **Office of the Director of Public Prosecution for State**
- **Office of the Legal Aid Commission for Accused**