

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 63 of 2014

STATE

V

KAND SAMI

Counselors: Ms. A. Vavadakua for State
Ms. S. Dunn (L.A.C.) for Accused

Date of Conviction : 17 May 2016

Date of Sentence : 20 May 2016

SENTENCE

[1] The accused has been convicted by this Court after trial of two counts of rape of the same girl who in the first instance was 12 years old and in the second incident 13 years old.

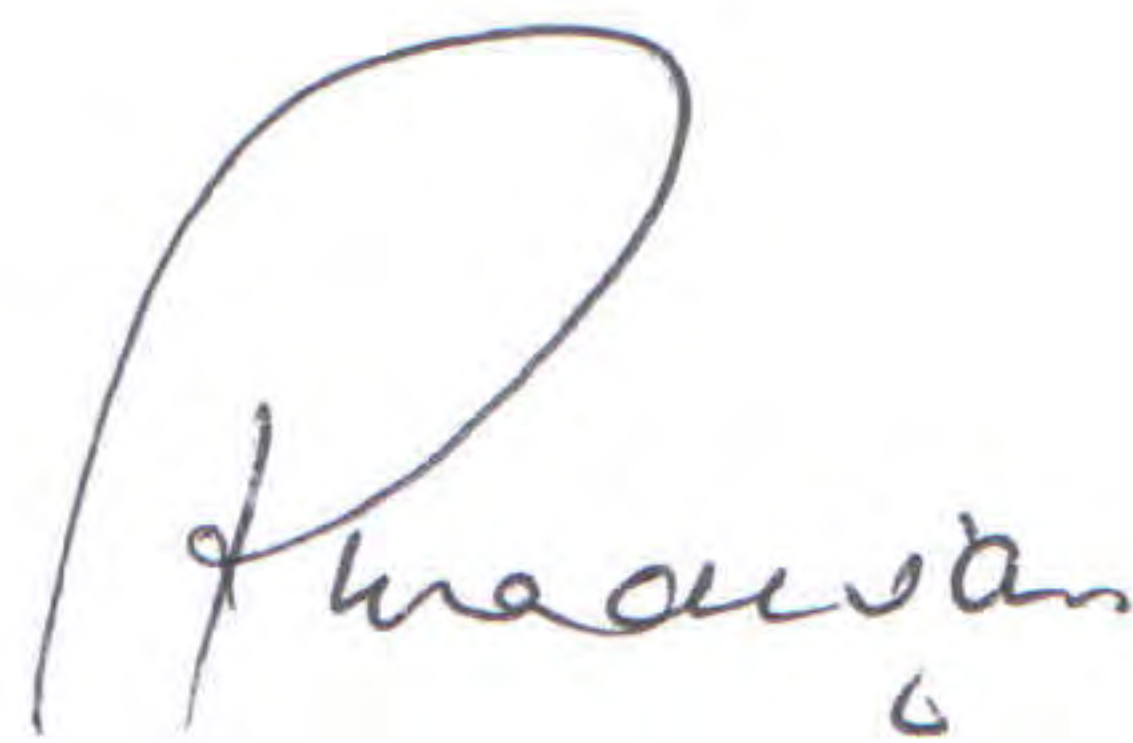
[2] The facts were that the victim called Linda (not her real name) was with her father visiting relatives in Nabouwalu, Bua in 2012. They stayed overnight with many other visitors in the home of the accused's uncle. The accused was also staying the

night. During the night the accused took Linda to another room where he undressed her and had sexual intercourse with her. As she was under 13 at the time the issue of consent is not relevant.

- [3] In August 2014, the young girl was again in the village and walking home from church. She came across the accused on the road and he dragged her off the road to a deserted spot where he detained her and raped her. She related the incident to her father who was incensed that she was late home and the Police were informed.
- [4] The accused is now 23 years old but 19 in 2012 and 21 in 2014. He is single but cares for his elderly widowed mother and a 9 year old nephew. He left school, aged 9 when his father died and has since that time built a house for his family in Siberia, Labasa.
- [5] He is employed as a construction labourer earning \$130 per week.
- [6] He is a first offender.
- [7] It is now well accepted after the Supreme Court's decision in **Anand Abhay Raj** CAV0003.2014 that the tariff for rape of a minor is a band from 10 to 16 years.
- [8] Apart from the mitigating features advanced on the accused's behalf by his Counsel, it is also to his credit that no violence was occasioned to the victim in either of the incidents.
- [9] It is tragic that a young man should become embroiled in such affairs that will deprive him of his constructive and valuable

years and will deprive a family of a son who has appeared to be very responsible towards them.

- [10] His mitigation is considerable and aggravation nil and in deference to the ethic of the Sentencing and Penalties Decree 2009, I must do everything to promote the rehabilitation of this young man who has never offended before.
- [11] I must also take note of the defilement and rape of such a young child whose progress to maturity has been inevitably impeded.
- [12] I take a starting point for the first count of rape of twelve years. There is nothing to add for aggravating features but I deduct 2 years for his considerable mitigation, including his young age and clear record.
- [13] The resultant sentence of ten years is the sentence he will serve for each of the two rape sentences, sentences to be served concurrently with each other.
- [14] In the circumstances of the offending and the offender I decline to set a minimum term that he should serve before being eligible for parole.



P. K. Madigan
Judge

At Labasa
20 May 2016

