

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 048 OF 2016LAB

STATE

vs

VILIAME VALO

Counsels : Ms. A. Vavadakua for State  
Ms. C. Choy and Mr. J. Korotini for Accused

Hearings : 13 and 14 December, 2017  
Summing Up : 15 December, 2017  
Judgment : 15 December, 2017  
Sentence : 18 December, 2017

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## SENTENCE

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1. In a judgment delivered on 15 December 2017, the court found you guilty and convicted you on the following counts in the following information:

### *FIRST COUNT*

#### *Statement of Offence*

RAPE: Contrary to section 207 (1) and 2 (a) and (3) of the Crimes Act 2009.

***Particulars of Offence***

VILIAME VALO, between 24<sup>th</sup> of January 2011 and the 29<sup>th</sup> of April 2011, in Bua, in the Northern Division, had carnal knowledge of N.D., a child under the age of 13 years.

***SECOND COUNT***

***[REPRESENTATIVE COUNT]***

***Statement of Offence***

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

***Particulars of Offence***

VILIAME VALO, between 24<sup>th</sup> of January 2011 and the 15<sup>th</sup> of August 2016, in Bua, in the Northern Division, unlawfully and indecently assaulted N.D.

***THIRD COUNT***

***Statement of Offence***

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

***Particulars of Offence***

VILIAME VALO, on 15<sup>th</sup> August 2016, in Bua, in the Northern Division, penetrated the vagina of N.D., a child under the age of 13 years, with his tongue.

2. The brief facts of the case were as follows. The above offences occurred between 24 January 2011 and 15 August 2016, a period of 5 years. In 2011, you were 60 years old and in August 2016, you were 65 years old. The complainant was 6 years old in 2011 and 11 years old in August 2016. You and your wife brought the complainant up ever since she was young. You and your wife were the complainant's grandparents.
3. In 2011, you began to abuse the complainant when she was 6 years old. You raped her by penetrating her vagina with your penis. She was under 13 years old and thus incapable, as a matter of law, of consenting to the above (count no. 1). Then you abused her when you touched her vagina (count no. 2). On 15 August 2016, you took the complainant to the family plantation to get cassava.

The plantation was right in the bush. In a secluded spot, you forcefully took off the complainant's clothes, and inserted your tongue into her vagina (count no. 3). She was still under 13 years old at the time.

4. The rape of children is always a serious matter, and Parliament had prescribed a maximum sentence of life imprisonment for the same: section 207 (1) of the Crime Act 2009. The Supreme Court of Fiji had set the tariff of 10 to 16 years imprisonment for the rape of children: see Anand Abhay Raj v The State, Criminal Appeal No. CAV 0003 of 2014. Of course the final Sentence will depend on the aggravating and mitigating factors.
5. "Sexual Assault" carried a maximum sentence of 10 years imprisonment (section 210 (1) of the Crime Act 2009). The tariff is a sentence between 2 to 8 years imprisonment: State v Epeli Ratabacaca Laca, Criminal Case No. HAC 252 of 2011S, High Court, Suva. Like the offence of rape, the final sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factors, were as follows:
  - (i) **Serious Breach of a Grandparents' Trust**. The female complainant (PW2) was your granddaughter. As such, you were supposed to look after and care for her. In fact, you had been looking after and cared for her since she was very young. As her grandfather, she trusted you. She expected you to look after her, give her security and protect her from the evils of this world. But you seriously breached her trust by doing the unthinkable, that is, you raped and sexually assaulted her. You then threatened to kill her if she told anyone about the incident. You must expect to be punished severely for your wrongdoing, and I hope you do not complain about your liberty been taken away, to pay for your crimes.
  - (ii) **Rape of children**. The court had said in the past and will say again that it will not tolerate the abuse of children, the future of this country. It will keep on passing long prison sentences, as warning to would-be child rapist.
  - (iii) By offending against the complainant, you had no regards to her right as a child, no regard to her rights as a human being, and no regards to her right to live a happy and peaceful life.
7. The mitigating factors were as follows:
  - (i) At the age of 66 years, this is your first offence;
  - (ii) You had been remanded in custody for approximately 9 months.
8. On count no. 1 (rape), I start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total of 16 years imprisonment. For being a first offender at the age of

66 years, I deduct 2 years, leaving a balance of 14 years imprisonment. For being remanded in custody for 9 months, I deduct 1 year from the 14 years, leaving a balance of 13 years imprisonment. On count no. 1 (rape), I sentence you to 13 years imprisonment.

9. I repeat the above process and sentence for count no. 3 (rape).

10. For count no. 2 (sexual assault), I sentence you to 12 months imprisonment.

11. The summary of your sentences are as follows:

(i)	Count no. 1	:	Rape	-	13 years imprisonment
(ii)	Count no. 2	:	Sexual Assault	-	12 months imprisonment
(iii)	Count no. 3	:	Rape	-	13 years imprisonment

12. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final total sentence of 13 years imprisonment.

13. Mr. Viliame Valo, for raping and sexually assaulting the female child complainant, between 24 January 2011 and 15 August 2016, at Bua in the Northern Division, I sentence you to 13 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.

14. Pursuant to Section 4(1) of the Sentencing and Penalties Act 2009, the above sentence was designed to punish you in a manner which was just in all the circumstances, to protect the community from people like you, to deter other would-be child rapist and to signify that the court and the community denounce the rape and sexual abuse of children.

15. The name of the female complainant is permanently suppressed to protect her privacy.

16. You have 30 days to appeal to the Court of Appeal.

  
**Salesi Temo**  
**JUDGE**



**Solicitor for State** : **Office of the Director of Public Prosecution, Labasa**  
**Solicitor for Accused** : **Office of Legal Aid Commission, Labasa**