

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 302 OF 2018S**

**STATE**

**Vs**

**USAIA MALO**

**Counsels : Ms. U. Tamanikaiyaroi for State**

**Mr. E. Radio for Accused**

**Hearing : 24, 25 and 26 February, 2020.**

**Summing Up: 27 February, 2020.**

**Judgment : 28 February 2020.**

**Sentence : 2 March 2020.**

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**SENTENCE**

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1. In a judgment delivered on 28 February 2020, you were found not guilty and acquitted of two counts of rape, against the 14 year old female complainant (PW1). However, you were found guilty of the defilement of the complainant, contrary to section 215 (1) of the Crimes Act 2009. You were convicted accordingly.
2. The brief facts were as follows: On 30 June 2018, you were 34 years old, married with 4 young children. You were a subsistence farmer and resided in a village in Moce, Lau. The female complainant was your grandniece. She was 14 years old at

the time, and was attending Form 3 at a secondary school in Moce. You and the complainant resided in the same village. After 8 pm on 30 June 2018, you approached the complainant, asked her for sexual intercourse, and thereafter had sexual intercourse with her. At the time, you knew she was 14 years old.

3. In **State v Isikeli Tamanisau**, Criminal Case No. HAC 177 of 2010S, I said the following, “...*Defiling a girl between 13 and 16 years old is a serious offence, and it carries a maximum penalty of 10 years imprisonment. Case precedents set the tariff between a suspended prison sentence to a sentence of 4 years imprisonment. Cases of “virtuous friendship” between young people of the same age, which ended in sexual intercourse, often attracted a suspended prison sentence. Cases of old man in a supervisory capacity or position of trust, who set out to seduce a girl under 16 years often get a prison sentence: Elia Donumainasava v The State, Criminal Appeal No. HAA 032 of 2001S, High Court, Suva; Etonia Rokowaqa v State, Criminal Appeal No. HAA 037 of 2004, High Court, Suva and State v Etonia Kabaura, Criminal Case No. HAC 117 of 2010S, High Court, Suva.” The final sentence will depend on the aggravating and mitigating factors.*
4. The aggravating factors were as follows:
  - (i) Breach of Trust. In a village setting, the elders always looked after the young ones, especially so when everyone are related to each other. In this case, the female complainant was your grandniece. You exploited her innocence and youthful naivety. You had sexual intercourse with her, knowing very well that such an action is customarily forbidden since she was your grandniece. However, you disregarded the accepted norm, and committed the offence against her. You will have to serve a custodial sentence as a lesson to you, and a warning to other would-be offenders.

- (ii) The age difference between you and the complainant was 20 years. Your eldest child was the same age as the complainant, that is, 14 years old.
5. The mitigating factors were as follows:
- (i) At the age of 34 years, this was your first offence.
- (ii) You had been remanded in custody for approximately 4 months 16 days, while awaiting trial and sentence.
6. I start with a sentence of 2 years imprisonment. I add another 2 years for the aggravating factors, making a total of 4 years imprisonment. I deduct 5 months for time already served while remanded in custody awaiting trial and sentence, leaving a balance of 3 years 7 months. For being a first offender, I deduct 7 months, leaving a balance of 3 years imprisonment.
7. Mr. Usaia Malo, for defiling the 14 year old female complainant on 30 June 2018 at Moce, Lau in the Southern Division, I sentence you to 3 years imprisonment, effective forthwith.
8. The name of the complainant is permanently suppressed to protect her privacy.
9. You have 30 days to appeal to the Court of Appeal.



**Solicitor for the State**  
**Solicitor for the Accused**

**:** **Office of the Director of Public Prosecution, Suva.**  
**:** **Legal Aid Commission, Suva.**

A handwritten signature in blue ink, appearing to be "Salesi Temo".

**Salesi Temo**  
**JUDGE**