

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

**CRIMINAL CASE NO: HAC 34 OF 2010**

**BETWEEN** : **STATE**

**AND** : **SOLOMONI NAQOLI**

**Counsel** : **Mr T. Qalinauci for the State**  
**Accused in Person**

**Date of Sentence** : **16<sup>th</sup> May 2013**

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**SENTENCE**

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- [1] The Accused above named is charged with one count of Rape punishable under Section 207(1) of the Crimes Decree No 44 of 2009.
- [2] Originally this case was fixed for trial on several occasions and it could not be reached because of various reasons. On the last occasion when the trial was about to begin the Accused pleaded guilty to the charge in the presence of the assessors.
- [3] The Accused admitted to the summary of facts submitted by the State. According to the summary of facts the Complainant was a 7 year old girl. The Accused is her uncle living in the same house. On the 21<sup>st</sup> March 2010 she was watching television and lying on the lap of the Accused. After sometimes the Accused took the child out by holding her hands. He had taken the child to the village hall which was dark

there he had felt her, kissed her on her lips, removed her panties and touched her vagina. Thereafter he removed his sulu and penetrated her vagina when she cried in pain he stopped it.

After seeing both, the mother inquired from the child, then she had relayed the incident to her. Mother in turn told it to her husband (victim's father). Matter was reported to the police and the child was subjected to medical examination on the 23/5/2010. There it was found the child had injuries on her vagina and the hymen was not intact.

### **Law**

- [4] Section 207 (1) of the Crimes Decree prescribes imprisonment for life as maximum sentence for the offence of Rape.

### **Tariff**

- [5] Tariff for the offence of Rape was discussed in many cases it ranges from 10 to 16 years imprisonment.
- [6] In **William Christopher Millbery & 2 Others vs. R** (2002) EWCA Crim. 2891 (09 December 2002) the Court held:

*“22. The Panel confirms the 15 years and upwards starting point for a campaign of rape. This is recommended where the offender has repeatedly raped the same victim over a course of time as well as for those involving multiple victims.”*

- [7] In **Mohammed Kasim v The State** (unreported) *Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994* the Court of Appeal observed (at p.6):

*“We consider that in 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.”*

- [8] In **State v Lasaro Turagabeci** [1996] FJHC 173; HAC 0008.1996S (27 November 1996) Pain J. said:

*“The Courts made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”*

- [9] In a case with some similarities to this case Shameem J in **The State v Navauniani Koroi** (unreported) Cr. App. Case No. HAA0050.2002S arrived at a sentence of 12 years and explained:

*“Taking the 7 years as the starting point, I increase the term by two years for the young age of the complainant, and a further three years for the fact that she is your daughter. I add a further year for the resulting pregnancy. I reduce the term by one year for the guilty plea and other mitigation ....”*

- [10] In **The State v Peniasi Senikarawa** (unreported) High Court Suva Cr. Case HAC 0017.2008S; 20 May 2003 the accused was sentenced to 11 years imprisonment. Shameem J started on the tariff at 7 years. The mitigation was that the accused had a good character, was hardworking and struggling to raise his son single handed. But for being in breach of his position of trust to his 14 year old step-daughter, for the beatings he gave her, and for the fact that she had to give evidence twice, the court imposed a further 4 years.

*“The Courts made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”*

[11] **State v Sailosi Selebula** (2010) HAC 148 of 2010 – The Court held that a single count of rape should properly reflect the complete abhorrence that members of the public feel towards adults who abuse young children in their case. The Court stated that a sentence in the region of 10 years would be appropriate. The accused was sentenced to 15 years imprisonment reduced to 14 years for good character. A non-parole period of 11 years was imposed.

[12] In **R v M** [1988] VSCA 68 (7 October 1998) the Supreme Court of Victoria – Court of Appeal held for the count of oral rape that the accused be sentenced to 6 years. We wish to draw attention to the fact here that the complainant was an adult and also the accused had been charged for other offences in this case. But the seriousness of the count of oral rape still reflects the sentence given and in the case before the Court this involves a child.

[13] Further the Court observed in **Millbery v R** (supra):

*“60 .... we note that the Court’s prior to the guideline were regarding relationship rape as serious and deserving heavy sentence.”*

[14] In the case of **State v Tauvoli** [2011] FJHC 216; HAC 027.2011 (18 April 2011) the Court in this case stated that:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect societies abhorrence for such crimes. Our nations 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.”*

[15] Considering the above factors I commence your sentence at 14 years imprisonment.

[16] Aggravating factors

- a) Victim is your niece and you betrayed the trust between uncle and niece;
- b) You really ruined the life of a 7 year old girl;
- c) You took advantage of the vulnerability of this small child.

Considering all I increase your sentence by 3 years now your sentence is 17 years imprisonment.

[17] Mitigating circumstances

- a) You have pleaded guilty (not at first occasion after about 3 years);
- b) You claim that you are remorseful;
- c) Family depending on you

Considering all I reduce 6 years from your sentence now your sentence is 11 years imprisonment.

[18] Since you have 2 previous convictions within operational period I am unable to give you any further concessions.

[19] Considering Section 18(1) of the Sentencing & Penalties Decree I impose 9 years as non parole period.

[20] You are sentenced to 11 years imprisonment. You will not be eligible for parole until you complete serving 9 years imprisonment.

[21] 30 days to appeal to Court of Appeal.

S. Thurairaja  
**Judge**

**At Lautoka**  
**16 May 2013**

**Solicitors: The Office of the Director of Public Prosecution for State**  
**Accused person appeared in Person**