

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**

**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO.: HAC 071 OF 2011**

**BETWEEN:**                      **THE STATE**

**A N D:**                              **VANAVASA MATIA**

**Counsel**                            :    Ms. Koto L. for the State  
    :    Mr. Nawasaitoga N for the Accused

**Date of Hearing**                :    29<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup> of July 2013

**Date of Summing Up:**        01<sup>st</sup> of August 2013

**Date of Sentencing** :        02<sup>nd</sup> of August 2013

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**SENTENCE**

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1. It is hereby ordered to suppress the name and the identity of the victim and she will be referred to as **Ms. E. B.**
2. **Vanavasa Matia**, you stand convict before this court for one count of **Rape**: contrary to **section 207 (1) and (2) (b) and (3)** of the **Crimes Decree No. 44 of 2009** after a full trial. This court concurred with the unanimous verdict of guilty of the assessors on **02<sup>nd</sup> of August 2013.**
3. **Count:**

*Statement of Offence (a)*

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

*Particulars of Offence (b)*

**Vanavasa Matia**, on the 06<sup>th</sup> day of February 2011 at Raviravi in Beqa, Nauva in the Central Division had carnal knowledge of **E.B.** without her consent.

4. It was established in court beyond reasonable doubt that you had sexual intercourse with Ms. E. B. on the eve of 06<sup>th</sup> of February 2011 at Raviravi in Beqa without her consent. The complainant was just over 14 years of age at the time of the incident. You had forcefully dragged her to the beach, removed all her cloths and raped her even though she was pleading with you of pain of the forceful sexual intercourse. The father of the victim had been unfortunate enough to see his daughter's plight, with all her clothes inside out and sand on the legs starting from thighs. The medical practitioner who examined the victim within 72 hours of the incident virtually confirmed the narration of the victim by saying that his observation of the healing lacerations on the vaginal walls is a good sign of recent vaginal penetration. Unfortunately, as admitted by you, the victim is your niece. It is in this factual back ground the unanimous verdict of guilt came out from the assessors and the court did concur with the same.
5. The **maximum penalty** for the offence of **Rape** is life imprisonment. The **tariff** in our jurisdiction for the offence of rape, when sentencing an adult, ranges from **07 – 15 years imprisonment**. (see **Mohammed Kasim v The State**, *Criminal Appeal No. AAU 0021j. 93S (1994) FJCA 25, (27 May 1994)*; **Bera Yalimawai v The State**, *Criminal Appeal Case No. AAU 0033 of 2003*, **Navuniani Koroi v The State**, *Criminal Appeal Case No. AAU 0037 of 2002*, **Viliame Tamani v The State**, *Criminal Case Appeal Case No. AAU 0025 OF 2003*, **The State v Bijendra** *Criminal Case No. HAC 127 of 2011*).
6. It is worthy of reminding once again what was highlighted in the case of **Mohammed Kasim v State** (*supra*):

*"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."*

The Court of Appeal in **Mohammed Kasim** (*supra*) went on to say that sentence for any rape case, without aggravating or mitigating features, the starting point should be at least 7 years imprisonment and stressed upon the fact that the particular circumstances of each case may decide what the proper sentence to be, either substantially higher or substantially lower than that starting point. Whereas **Justice Madigan** pointed out in **State v Leone Kotobalavu Veresa**, (*Criminal Case No: HAC 259 of 2013*) in recent times with the ever increasing counts of rape coming before High Courts, sentences of 7 to 15 years have been handed down to the perpetrators. When it comes to a child victim a different band of a sentencing tariff is applied and in this instance, as said earlier, the victim was over 14 years of age at the time of the incident.

7. **Justice Gates**, as he was then, stated in **State v. Marawa** (2004) *FJHC 338*, that:

*"Rape is the most serious sexual offence. Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences"* (paragraph 10)

8. After a careful consideration of the legal background on Sentencing for the offence of **Rape**, I now have to decide a starting point for your sentence. This court prefers to have **10 years imprisonment as** the starting point.
9. The learned State Counsel submitted a detailed **Sentencing Submission** along with the **Victim Impact Assessment Report**. The learned Counsel for the defense filed her submissions in **Mitigation** as well. The **Victim Impact Assessment Report** clearly reflects present condition of the victim. It is not that precise whether the emotional and psychological impacts to the victim, as stated in the report, did cause in consequence to this crime as there can definitely be a history of this nature since birth.
10. There are several aggravating features in this instance. **Firstly**, the victim is physically impaired and mentally retarded. We all witnessed the fact that she is not fully grown up to her age as she is physically handicapped. The doctor who examined the complainant told in court that she is slow and mentally retarded. When she walked around the court room to see whether the one she referred as "PANA" is in court, we saw the effort that she puts to walk and in fact, the court clerks had to extend helping hands to move her around. Aminiasi, the father of the complainant told in court that when the victim lead him to the place where she was raped, he clearly recognized the foot and palm prints of his daughter as there is a deformity in her arms and legs. In court, we basically saw what the exact condition of the victim. You are been found guilty to a charge of rape of a girl of that nature.
11. **Secondly**, you had used a considerable amount of force to get her surrendered to you. Use of force to have sexual satisfaction from a girl of this nature is something to be considered very seriously. **Thirdly**, the victim is your niece and that fact alone amounts to a serious breach of trust. Being the uncle of the victim, you did not have any respect to the social and cultural bonds prevail in the society. **Finally**, you were not at any time remorseful for your actions. You allowed the victim to be torment once again in the trial process. These aggravating factors do add a great weight to your offending and thus, I add **06 years imprisonment** to the starting point.
12. The interim sentence of you will now remain at **16 years imprisonment**.
13. The **Mitigation** submitted on behalf of you says that you are 38 years of age and living in a de-facto relationship with your partner and her three children. You do not have any children over this relationship. You are a diver and earn \$ 100 a week. You contribute from this income for the wellbeing of the family. A long custodial sentence of you will have a direct bearing on their lives. You are a first offender with a clear criminal record. Finally, the mitigation submission claims that a sentence of incarceration will cause you more despair and will not rehabilitate you and therefore justice would be best served if you be given not more than 08 years to be served as a prisoner. Apart from the fact that you are a first offender with a clean record I see nothing in the mitigation submission to award you any concession. I decide to **reduce 03 years** out of the interim period of imprisonment for that mitigatory ground.

14. **Your final sentence now stands as 13 years imprisonment.** I order that you be served a minimum term of **11 years** before being eligible for **parole**.
15. Having considered the domestic nature of the relationship you share with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place for the protection of **Ms. E. B.** with standard non-contact condition. You are hereby ordered not to have any kind of a contact with the victim directly or by any other means unless and otherwise orders by the court.
16. You have 30 days to Appeal to the Court of Appeal.

Janaka Bandara  
**JUDGE**

**At Suva**  
02<sup>nd</sup> of August 2013

Office of the Director of Prosecutions for the State  
Legal Aid Commission for the Accused