

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

**CRIMINAL CASE NO.: HAC 125 OF 2013**

**STATE**

**-v-**

**SEREMAIA DELA**

**Counsels** : **Mr. A. Singh for the State**  
: **Mr. R. Kumar for the accused**

**Date of Sentence** : **29 November 2013**

(Name of the victim is suppressed she is referred to as EF)

**SENTENCE**

1. You are charged as follows:

**FIRST COUNT**  
***Statement of Offence***

**RAPE**: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

***Particulars of Offence***

**SEREMAIA DELA** between 1<sup>st</sup> day of January 2011 to the 31<sup>st</sup> day of December 2011 at Nadelei Village, Vatukoula, Tavua in the Western Division penetrated the mouth of **EF**, a child under the age of 13 years, with his penis.

**SECOND COUNT**  
***Statement of Offence***

**RAPE**: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Decree 44 of 2009.

### ***Particulars of Offence***

**SEREMAIA DELA** between 1<sup>st</sup> day of January 2011 to the 31<sup>st</sup> day of December 2011 at Nadelei Village, Vatukoula, Tavua in the Western Division penetrated the vagina of **EF**, a child under the age of 13 years, with his penis.

### **THIRD COUNT** ***Statement of Offence***

**INDECENTLY INSULTING OR ANNOYING A FEMALE**: Contrary to Section 213 (1) (a) of the Crimes Decree No. 44 of 2009.

### ***Particulars of Offence***

**SEREMAIA DELA** between 1<sup>st</sup> day of January 2012 to the 31<sup>st</sup> day of December 2012 at Nadelei Village, Vatukoula, Tavua in the Western Division with intent to insult the modesty of **EF** by showing his penis to the said **EF**.

2. On 7<sup>th</sup> November 2013 you pleaded guilty to all three charges against you and admitted the Summary of Facts on the next day 15<sup>th</sup> November 2013.
3. The Summary of Facts submitted by the State Counsel states as follows:

The victim in this case is one **EF**, 11 years of Nadelei Village, Vatukoula, Tavua.

The accused is **Seremaia Dela** of Nadelei Village, Vatukoula, Tavua. The accused was 38 years old at the time of the offending.

The victim, **EF** was staying alone with her grandmother as her mother had re-married and was staying somewhere in Lautoka. The first incident happened when the victim was 8 years old.

Sometimes between the 1<sup>st</sup> day of January 2011 to the 31<sup>st</sup> day of December 2011, the victim was cleaning her bedroom when she saw the accused, Seremaia Dela inside her room. The accused suddenly pulled the victim towards him. The accused then started undressing the victim whilst removing his trousers at the same time. The accused then informed the victim to suck his erected penis to which she refused. The accused then forcefully pulled the victim's neck and pushed her head towards his erected penis. The accused then forcefully made the victim suck his penis for some time.

The second incident occurred when the accused then lifted the victim, facing him to sit on his lap and forcefully inserted his erected penis into her vagina and pushed her up and down. The accused stopped when he heard the victim's grandmother coming

towards the room. He further warned the victim not to tell anyone or else he will punch her and left the scene after putting on his trousers.

The third incident occurred sometimes between the 1<sup>st</sup> day of January 2012 to the 31<sup>st</sup> day of December 2012. The victim was on her school holidays at her grandmother's place at Nadelei Village when one day whilst sitting underneath a lemon tree she noticed the accused standing inside her uncle's house about 5 meters away from where she was. The accused started showing his tongue to her and opened his zip and exposed his erected penis to the victim. Later that night the victim reported the incident to her grandmother. This matter came to light when the victim revealed the incident to her teachers at Vatukoula Convent Primary School. The accused was arrested, interviewed under caution to which he admitted to committing the offence. The victim was medically examined on the 11<sup>th</sup> of June 2013.

The accused was subsequently charged for two counts of **Rape** and one count of **Indecently Insulting**; pursuant to the Crimes Decree No. 44 of 2009.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for two counts of Rape and one count of Indecently Insulting or Annoying a female and accordingly you are convicted for two counts under Section 207 (1) and (2) (c) and (3) of the Crimes Decree and one count under Section 213 (1) (a) of the Crimes Decree respectively.
5. Accused **Seremaia Dela** you stand convicted for two counts of rape and one count of indecently insulting or annoying a female.
6. The tariff for rape is well settled since the Judgment of His Lordship Mr. A.H.C.T. Gates in **State v Marawa**. [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
7. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed

*"We consider that at 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. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 15 years.
9. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011. His Lordship Mr. Paul Madigan held that:

*“Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s 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.”*

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

10. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 His Lordship Mr. Priynatha Nawana held that:

*“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”*

11. Considering the above, I commence your sentence at 13 years imprisonment for each charge of Rape.
12. Aggravating factors;
  - (a) The victim was of a younger and tender age,
  - (b) Victim was subjected to more than one sexual act,
  - (c) You had made the victim sexually active at a young age,
  - (d) You had traumatized the life of the victim.

Considering all, I increase your sentence by 3 years, now the sentence is 16 years imprisonment.

13. For the guilty plea, I deduct 3 years and now your sentence is 13 years.

14. Mitigating circumstances

(a) You are first offender at the age of 38 years

Considering all, I reduce 1 year from your sentence, now your sentence is 12 years imprisonment.

15. You were in remand from 12.6.2013 for a period of 5 months. I deduct that period from above sentence. Now your sentence is 11 years and 7 months.

16. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 11 years as non parole period.

17. The maximum penalty for the offence of Indecent Assault is 5 years imprisonment.

18. The tariff for the offence of Indecent assault is between 1 to 4 years imprisonment as decided in ***Ratu Penioni Ratoka v State*** [2002] FJHC 168;HAA 0068J.2002S. Further court observed that *“The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence.”*

19. I start the sentence for the charge of indecent assault at 2 years and add 2 years for the aggravating factors mentioned above and deduct 1 year for the mitigating factors.

20. For the charge of indecent assault, I sentence you for a period of 3 years with a non parole period of 2 years.

21. Your sentences are as follows:

- |       |   |   |                   |
|-------|---|---|-------------------|
| (i)   | 1 <sup>st</sup> count of Rape             | - | 11 years 7 months |
| (ii)  | 2 <sup>nd</sup> count of Rape             | - | 11 years 7 months |
| (iii) | 3 <sup>rd</sup> count of Indecent assault | - | 3 years           |

22. The Fiji Court of Appeal in ***Vukitoga v State*** [2013] FJCA 19; AAU 0049.2008 (13 March 2013) cited with approval the following citation of D.A. Thomas, Principles of Sentencing (2<sup>nd</sup> edition, 1979) p. 56-57 which was cited in High Court of Australia judgment ***Mill v The Queen*** [1988] HCA 70:

*“The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and*

*each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong'; "when... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences."*

23. Considering the totality principle, I order the sentences of all three charges to run concurrently.
24. There was report from psychiatrist Victor Herald Wasson that you are fit to plea. The doctor was called to give evidence. According to him you had schizophrenia. Now you are treated and fit to plea. Further such treatment could be continued while you are in remand. Once you are served the term a community treatment order could be issued if needed.

### **Summary**

25. You are sentenced to 11 years and 7 months imprisonment. You will not be eligible for parole until you complete serving 11 years of imprisonment.
26. Prison authorities are directed to continue with the treatment of you acting under Section 86 (1) & (2) of the Mental Health Decree, 2010.
27. 30 days to appeal to Court of Appeal.

Sudharshana De Silva  
**JUDGE**

**AT LAUTOKA**  
**On 29<sup>th</sup> November 2013**

**Solicitors for the State:**  
**Solicitors for the Accused:**

**Office of the Director of Public Prosecution**  
**Office of the Legal Aid Commission**