

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

**CRIMINAL CASE NO.: HAC 014 OF 2013**

**STATE**

**-v-**

- 1. JALE LAGANIKORO**
- 2. KOLAIA BUCALEVU**

**Counsels : Mr. F Lacanivalu for the State**

**Both Accused in Person**

**Date of Trial : 22 July – 26 July 2013**

**Date of Sentence : 30 July 2013**

**(Name of the Victim suppressed. He is referred to as IN)**

**SENTENCE**

1. The two accused are before the Court for sentence, after being convicted of the following charges.

First Count

*Statement of offence*

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

*Particulars of Offence*

**KOLAIA BUCALEVU** on the 15<sup>TH</sup> day of November 2010, at Nadi, in the Western Division, penetrated the anus of **IN** with his penis, without the consent of the said **IN**.

Second Count  
*Statement of offence*

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

*Particulars of Offence*

**JALE LAGANIKORO** on the 15<sup>TH</sup> day of November 2010, at Nadi, in the Western Division, penetrated the anus of **IN** with his penis, without the consent of the said **IN**.

2. You both pleaded not guilty to above charges. Following trial lasting five days in this Court you were found guilty on above counts against you.
3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial the Court decided to concur with the verdict of the assessors and found you guilty of the above charges.
4. Thus **KOLAIA BUCALEVU** you stand convicted for the charge of rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009. **JALE LAGANIKORO** you too stand convicted for the charge of rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.
5. The following facts were proven in evidence during the trial. The 21 year old victim IN was physically and sexually abused by both of you on 11<sup>th</sup> November 2010 after you had some Beer with the victim and others. From the evidence it is clear that you forced him to suck each one of your penis and also penetrated his anus with your penis. You both have assaulted the victim resulting in several bruises on the back side of the body.
6. You had no remorse for your above conduct during the trial.
7. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence. The tariff for rape is well settled since the Judgment of then A.H.C.T. Gates J 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.
8. 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."*

9. Considering the above I commence your sentence at 7 years imprisonment.

10. Aggravating factors;

- (a) The victim was physically assaulted by both accused
- (b) You are not remorseful
- (c) Victim had several injuries as the results of your acts

Considering all I increase your sentence by 3 years now the sentence is 10 years imprisonment.

11. Mitigating circumstances of the 1<sup>st</sup> accused are,

- (a) You are first offender,
- (b) Family depending on you and you are father of a child aged 2 years,
- (c) Now you seek forgiveness from the victim.

Considering all I reduce 3 years from your sentence now your sentence is 7 years imprisonment.

12. Mitigating circumstances of the 2<sup>nd</sup> accused are,

- (a) You are first offender,
- (b) You are from broken family and had troubled childhood and looking after two younger brothers,
- (c) Now you seek forgiveness from the victim.

Considering all I reduce 3 years from your sentence, now your sentence is 7 years imprisonment.

13. Considering Section 18 (1) of the Sentencing and Penalties Decree I impose 5 years as non parole period.

14. Each one of you is sentenced to 7 years imprisonment. You will not be eligible for parole until you complete serving 5 years of imprisonment.

15. 30 days to appeal to Court of Appeal.

Sudharshana De Silva  
**JUDGE**

**AT LAUTOKA  
30 July 2013**

**Solicitors for the State : Office of the Director of Public Prosecution, Lautoka  
Solicitors for the Accused: Both in Person**