

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 201 OF 2012S

STATE

VS

AISAKE KIVI

Counsels : **Mr. S. Nath and Ms. W. Elo for the State**
Mr. M. Fesaitu for Accused

Hearings : **14, 15 and 16 April, 2014**

Summing Up : **17 April, 2014**

Judgment : **17 April, 2014**

Sentencing : **22 April, 2014**

SENTENCE

1. In a judgment, delivered on 17 April 2014, the court found you guilty of raping the child complainant, on 26 May 2012, at Kadavu in the Eastern Division, contrary to section 207 (1) and (2) (b) of the Crimes Decree 2009 (Count No. 1). On 14 April 2014, before the trial proper commenced, you pleaded guilty to sexually assaulting the complainant, on the same day, by sucking her vagina, contrary to section 210 (1) (a) and (2) of the Crimes Decree 2009 (Count No. 2); and also by indecently assaulting her, on the same day, by fondling her breasts, contrary to section 212 (1) of the Crimes Decree 2009 (Count No. 3). You have been convicted of all the above offences.

2. The brief facts were as follows. You taught at Richmond Methodist School as a music teacher. You resided in a teacher's quarters in the school compound. You were 49 years old at the time, while the complainant was 13 ½ years old. You asked the complainant's parents for the complainant to clean your house. You lived alone. At your house, you asked the complainant to massage your back. While she was massaging your back, you committed the above offences against her, without her consent and well knowing she was not consenting to the same, at the time.
3. "Rape" is always a serious offence, and it carries a maximum sentence of life imprisonment (section 207 (1) of the Crimes Decree 2009). Society views "rape" as the worst form of sexual assault, and an unwanted invasion of a person's privacy and dignity, thus prescribing the maximum sentence of life imprisonment. The tariff for the rape of an adult is 7 to 15 years imprisonment; while the tariff for the rape of a child is a sentence between 10 to 16 years imprisonment: **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal; **Mark Mutch v The State**, Criminal Appeal No. AAU 0060 of 1999, Fiji Court of Appeal.
4. "Sexual Assault" carried a maximum sentence of 10 years imprisonment. There is no established tariff, but I accept what His Lordship Justice Paul Madigan said in **State v Epeli Ratabacaca Laca**, Criminal Case No. HAC 252 of 2011, High Court of Suva. His Lordship set the tariff between 2 to 8 years imprisonment, the higher tariff been set for serious sexual assaults.
5. "Indecent assault" carried a maximum sentence of 5 years imprisonment, and the tariff had been set between 1 to 4 years imprisonment: **Ratu Penioni Rakota v The State**, Criminal Appeal No. HAA 0068 of 2002S, High Court, Suva. The final sentence will depend on the mitigating and aggravating factors.
6. The aggravating factors in this case were as follows:
 - (i) Breach of Trust. A teacher always stands in a fiduciary relationship with a student. In a school setting, the teacher is the student's "mother, father, counselor and mentor", and is

there to see that the student grows into been a useful member of society. It is a sacred relationship, and should not be abused at all. In this case, by committing the offences against the child complainant, the accused had abused the trust placed on him.

- (ii) By offending against the complainant, the accused had caused injuries to her, as reported in her medical report, and caused emotional traumas as reported in her victim impact report.
- (iii) By offending against the complainant, the accused had showed utter disregard to her right as a human being, and her right to personal privacy.

7 The mitigating factors were as follows:

- (i) At the age of 49 years, this is the accused first sexual offences;
- (ii) He had apologized to the complainant's parents;
- (iii) He had been remanded in custody for approximately 11 months 2 weeks.

8 On the "rape" charge (count no. 1), I start with a sentence of 12 years imprisonment. For the aggravating factors, I increase the same by 4 years, to 16 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 13 years imprisonment.

9 On the "sexual assault" charge (count no. 2), I start with 4 years imprisonment. I add 2 years for the aggravating factors, making a total of 6 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 4 years imprisonment.

10 On the "indecent assault" charge (count no. 3), I sentence the accused to 2 years imprisonment.

11 In summary, your sentence are as follows:

- (i) Count No. 1 : Rape : 13 years imprisonment.
- (ii) Count No. 2 : Sexual Assault : 4 years imprisonment.
- (iii) Count No. 3 : Indecent Assault: 2 years imprisonment.

12. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, a total sentence of 13 years imprisonment.
13. Before I leave this case, it must be said that the teaching profession is a noble one in this country. A lot of us owe our destiny to the hard honest work that our teachers have taught us through the years. Most of them have passed on, but their values stay with us until the end. This case is designed for the few that have strayed off the course.
14. For offending against the child complainant, I sentence you, Aisake Kivi, to 13 years imprisonment, with a non-parole period of 11 years, effective forthwith.
15. The name of the complainant is permanently suppressed to protect her privacy.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for Accused : **Legal Aid Commission, Suva.**