

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION.

HIGH COURT CASE NO. HAC 184 OF 2012
(consolidated with HAC 185/12 - 193/12)

BETWEEN

STATE

AND

1. ATAMA VEREVOU
2. MINIUSE RARASEA
3. EPINERI LATA

BEFORE THE HON. JUSTICE PAUL K. MADIGAN

Counsel: Mr. M. Vosawale with Mr. S. Nath and Ms. R.Uce for the State
Mr. K. Maisamoa for all accused

Dates of trial: 28 April to 5 May 2014
Date of sentence: 8 May 2014

SENTENCE

Atama Verevou, Miniuse Rarasea and Epineri Lata you were charged with the following offences :

FIRST COUNT

(Representative Count)

Statement of Offence (a)

UNNATURAL OFFENCE: Contrary to Section 175 (a) of the Penal Code, Cap 17.

Particulars of Offence (b)

ATAMA VEREVOU, from the 1st day of January 2008 to the 31st day of December 2008 at Rakiraki village, Kadavu, in the Central Division, had carnal knowledge of SEMISI NACAGILEVU ULUINACEVA against the order of nature.

SECOND 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)

ATAMA VEREVOU from the 1st of January to the 31st of December 2011 at Rakiraki Village, Kadavu, in the Central Division, penetrated the anus of NETANI BOLACIRI, a child under the age of 13 years, with a piece of stick.

THIRD COUNT*(Representative 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)

ATAMA VEREVOU FROM THE 1ST OF December 2011 to the 31st of January 2012 at Rakiraki Village, Kadavu, in the Central Division, penetrated the anus of NETANI BOLACIRI, a child under the age of 13 years, with his finger.

FOURTH COUNT*(Representative Count)**Statement of Offence (a)*

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

Particulars of Offence (b)

MINIUSE RARASEA, from the 5th day of September 2011 to the 2nd day of December 2011 at Rakiraki Village, Kadavu, in the Central Division, penetrated the mouth of SEMISI NACAGILEVU ULUINACEVA with his penis, a child under the age of 13 years.

FIFTH COUNT

(Representative Count)

Statement of Offence (a)

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

Particulars of Offence (b)

EPINERI LATA, from the 1st day of February 2010 to the 17th day of April 2012 at Rakiraki Village, Kadavu, in the Central Division, had carnal knowledge of SEMISI NACAGILEVU ULUINACEVA, a child under the age of 13 years.

- [1] After trial you, Verevou, were found convicted of the 1st count and for 2nd and 3rd counts, convicted of the lesser alternative charges of sexual assault.
- [2] Rarasea and Lata, you were each convicted of counts 4 and 5 respectively.
- [3] The facts elicited at trial are that commencing as long ago as in 2008 several young boys of your village in Kadavu were being sexually abused not only by you but by others as well. In 2008, Verevou you had anal sex with a young boy of 7 years of age, when you were 16. A child of under the age of 13 years is not able in law to consent to full penetrative sex and therefore your act was an unnatural offence as it was called in 2008 (it would be called rape now).
- [4] In 2011, near the river, you sexually assaulted another boy of 9 years of age with a stick to his buttocks when he was naked after swimming. In the Christmas holidays of 2011/2012 you again assaulted this other boy by using your finger to prod his anus.

- [5] Miniuse in 2011 you made the first boy who was 10 at the time perform a sexual act on you with his mouth, an act which is now classified as rape in the Crimes Decree. Epineri at some indefinite time you had anal sex with the first boy when he was 9 or 10 years old.
- [6] All of these acts were performed at isolated places from the village, either by a swimming spot in the river, at the reservoir or in bushes nearby. Each one of you told the young boys not to tell anybody and they tell me that they were frightened.
- [7] These abominable crimes came to the attention of the authorities when a teacher noticed blood on the chair of the first boy. Enquiries were made and the police were called after the Ministry of Education had been informed.
- [8] It is extremely sad that these two young boys (and the court has heard of others) were living in a climate of fear and sexual abuse imposed by you, their elders in the village. The accused had no intentions but to seek their own sexual gratification.
- [9] Verevou the first accused is now 20 years of age and a farmer. His counsel tells me that he is a child of a broken marriage and raised by his mother alone who struggled to provide for him. He has been educated to Form 7 and wants to now pursue studies to become a lawyer. He is single and has a clear record. His counsel asks that he be given a suspended sentence, a submission which loses touch with reality given that he has forcibly sodomised a child of 7.
- [10] The maximum penalty for unnatural offence is 14 years imprisonment and a tariff set by Mataitoga J is between 4-6 years. Despite that tariff, Pathik J said in Sifero Seru HAM 1 of 2001 when looking at sentencing an accused for unnatural offence of 3 youths aged 7, 8, and 9 that the crimes were so reprehensible that sentence of at least 7 years should be passed.
- [11] The Court has several difficulties in arriving at an appropriate sentence for the first accused. First in 2008 he was only 15 and therefore as he is a juvenile I cannot pass any term of imprisonment on him of more than 2 years, a point that seems to have eluded his counsel. Secondly, the offence is charged as a representative count. Yet

there has been no evidence led of any other unnatural offence. I must sentence the first accused only for one act of unnatural offence that he has been convicted of. For that alone and without any aggravation of other offending I am constrained by the Juveniles Act Cap 56 to sentence the first accused to no more than 2 years imprisonment because of his young age at the time of the offence. Although the offence would warrant a sentence of ten years for an adult offender, I sentence the first accused to a term of imprisonment of two years on the first count.

[12] By the time he committed the second offence (Count 2), sexual assault) the first accused was 18 and no longer a juvenile.

[13] The maximum penalty for sexual assault is ten years imprisonment, but life imprisonment if there is penetration. There has been no penetration in this case and for that reason the charge of rape was reduced to this lesser alternative. Ten years then is the appropriate maximum.

[14] In the case of Abdul Khaiyum HAC 160 of 2010, this Court confirmed the tariff for sexual assault (which this is) to be between two to eight years.

[15] For the assault of the young naked boy with a stick to his anal region, I take a starting point of five years. For the accused's clear record and relative youth I deduct 1 year meaning that he will serve a term of four years for Count two.

[16] The conviction of the first accused on the third count is for an assault by finger on the same young boy when they were at the river. The boy in his evidence said he had poked his anus with his finger. He said "I felt it. I felt it outside". For this serious non invasive sexual assault I take a starting point of six years deducting one year for youth and clear record meaning that he will serve a term of five years for Count three.

[17] In the first accused's caution statement he admits to multiple acts of rape of the victim in Counts 2 and 3, but these were never the subject of a charge, even a representative charge and I cannot therefore enhance the sentences passed for the aggravation of multiple offending. The first accused's co-accused having been

convicted of rape will face sentences in the range of 10 to 15 years given the tariff for rape of children and they might rightly feel aggrieved if the sentence passed on the first accused is much less than theirs, given that the first accused appears to have been a principal player in this web of abuse. I am however restricted in my sentences to the convictions on the charges as they have been framed by the D.P.P, and it is the charges, misrepresentative as they are, that lead to this iniquitous result.

- [18] I order that the sentence on Counts two and three be served concurrently as the victim is the same and the time scale is reasonably contemporaneous. These sentences however will be consecutive to the sentence of two years on the first count meaning that the first accused will serve a total term of seven years imprisonment. He has spent 4 months in custody awaiting trial and his final sentence therefore will be 6 years and 8 months. He will spend six years in custody before being eligible for parole.
- [19] The Court of Appeal recently in the case of Anand Abhay Raj AAU 0038.2010 (5 March 2014) affirmed that rapes of children will attract sentences in the range of 10 to 16 years.
- [20] The rape of this young boy by the second and third accused are acts that will destroy him psychologically for much of his life. The child victim of both counts four and five says in the victim's impact report that he feels immense shame within the village and he has become socially reticent as a result. It is clear that his own development to sexual maturity will be arrested or possibly aberrated. It is an aggravating feature that these two older village boys took advantage of a younger boy of the village and of somebody who should have been taught by example.
- [21] The second accused is 26 years and 24 at the time of the offending when the child was eleven. The age difference is an aggravating feature. He is a farmer, from a broken home and raised by his grandmother who is now very old. He has a clear record and is remorseful, I am told. His counsel's request for a suspended sentence is breathtakingly unrealistic as is counsel's suggestion that these offences arose merely out of sexual experimentation. There is no evidence of that whatsoever.

[22] For Count 4 against the second accused, I take a starting point of fourteen years. I increase that by one year for the aggravation of age difference and breach of village trust. I decrease the sentence by one year for his comparative youth, and for his clear record. The second accused's sentence is now fourteen years. I deduct 4 months for the period he has spent in remand awaiting trial meaning that the second accused will serve a total sentence of thirteen years and 8 months. He must serve thirteen years before he is eligible for parole.

[23] The third accused is 20 years old and also a farmer. He is a first offender and remorseful. Again, unrealistically his counsel asks for a suspended sentence. However to anally rape a boy who was 10 years old at the time is a heinous crime and this Court can show no mercy.

[24] For the Fifth count I take a starting point of fourteen years, increasing that by one year for the age difference and breach of trust. I deduct one year for the clear record and for his youth, being only 20 years old I deduct a further year meaning the third accused will serve a total sentence of thirteen years. He has already spent 4 months in custody awaiting trial so the total sentence that the third accused will serve is a sentence of 12 years and 8 months. He will serve 12 years before being eligible for parole.

Conclusion

[25] First accused:	Count 1:	2 years
	Count 2:	4 years)concurrent with
	Count 3:	5 years)each other but
) consecutive to
)Count 1
	Total sentence:	6 years 8 months.
	Minimum term:	6 years.
Second accused:	Count 4:	13 years 8 months
	Minimum term:	13 years.

Third accused:

Count 5:

12 years 8 months

Minimum term:

12 years.



At Suva
8 May 2014

A handwritten signature in black ink, appearing to read "P.K. Madigan". The signature is written in a cursive style with a large, looping initial "P".

P.K. Madigan
Judge