

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

**CRIMINAL CASE NO: HAC 041 OF 2012**

**BETWEEN** : **STATE**

**AND** : **WASEA RAMASIMA**

**Counsel** : Mr. Nath with Ms. Elo for the State  
: Mr. Fesaitu for the Accused

**Date of Hearing** : 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> April, 2014  
**Date of Summing Up** : 11<sup>th</sup> April, 2014  
**Date of Judgment** : 17<sup>th</sup> April, 2014  
**Date of Sentence** : 23<sup>rd</sup> May 2014

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## SENTENCE

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1. Waisea Ramasima, you stand convicted for the following six counts (6) of Rape, contrary to section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009. This court found you guilty of all the six counts at the end of a full trial with assessors.

**First Count**  
**[Representative Count]**  
*Statement of Offence*

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

*Particulars of Offence*

**WAISEA RAMASIMA** between the 1<sup>st</sup> day and 30<sup>th</sup> day of April 2011 at Vuci Road, Nausori in the Central Division, had carnal knowledge of E.V. without her consent.

**Second Count**

[Representative Count]

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA RAMASIMA** between the 1<sup>st</sup> day and 30<sup>th</sup> day of June 2011 at Vuci Road, Nausori in the Central Division, had carnal knowledge of E.V. without her consent.

**Third Count**

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA RAMASIMA** on the 20<sup>th</sup> day of July 2011 at Vuci Road, Nausori in the Central Division, had carnal knowledge of E.V. without her consent.

**Fourth Count**

[Representative Count]

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA RAMASIMA** between the 1<sup>st</sup> day and 30<sup>th</sup> day of September 2011 at Vuci Road, Nausori in the Central Division, had carnal knowledge of E.V. without her consent.

**Fifth Count**

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA RAMASIMA** on the 7<sup>th</sup> day of October 2011 at Vuci Road, Nausori in the Central Division, had carnal knowledge of E.V. without her consent.

**Sixth Count**

*Statement of Offence*

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

*Particulars of Offence*

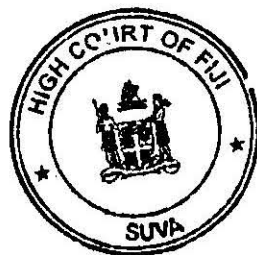
**WAISEA RAMASIMA** on the 8<sup>th</sup> day of October 2011 at Vuci Road, Nausori in the Central Division, had carnal knowledge of E.V. without her consent.

2. It was revealed at the trial that Ms. E.V., the victim had been sexually abused by you somewhere between April 2011 to 8<sup>th</sup> of October 2011 for six times. She had surrendered to your authority as her uncle and the guardian who meets her expenses for living and education. You had told her several times that you will simply abandon her in case she divulges her sexual activities with you to anybody. Ms. E.V. had got pregnant as a result of her sexual relationship with you and given birth to a baby at the

time she offered evidence in court. This court in its judgment, overturned the unanimous opinion of the assessors and found you 'guilty' as the 'submission' of Ms. E.V. to your 'demands' cannot be considered as 'free and voluntary consent' to have sexual intercourse.

3. The maximum sentence for 'Rape' under the Crimes Decree, as well as the Penal Code, is life imprisonment. For a rape on an adult person, the tariff ranges from 7 to 15 years imprisonment. (see **Mohammed Kasim v The State**, *Criminal Appeal No. AAU 0021j.93S (1994) (FJCA 25, (27 May 1994); Bera Yalimaiwai 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*).
4. Having considered the existing circumstances, I take a starting point of 8 years imprisonment to proceed with your sentence for each count.
5. There is no doubt that you breached the all-important guardianship trust towards Ms. E.V. You were supposed to look after her and guide her to have a good education as her uncle. She had come to Viti Levu with the high expectations of securing a better future with a sound education. Your opportunistic actions had only resulted her becoming a young single mother. You had completely robbed the youth of your niece systematically within several months. Now she is left alone with a devastated future and a lifelong trauma. For these aggravating factors, I add 4 years imprisonment to the starting point.
6. In mitigation, you claimed that you are 49 years of age and married with 4 children, the oldest being 16 years and youngest is 11 years old. You are the sole breadwinner of the family. Now you are unemployed.
7. Pastor Manasa Bainivatu of Pentecost Church was called by you to offer character evidence before the sentencing. The Pastor said that he is been knowing you since 2009 and said that you were burdened a lot after this incident. He reminded that even the people who serve god might falter, but will rise again. He raised his concerns about the church expansion programme, as it would be difficult without a good carpenter like you.

8. Mrs. Ramasima, your wife also testified in sentencing hearing and confirmed the difficulties, mainly financial, that they are facing in your absence. She said that she had forgiven you and accepted back to the family.
9. Most importantly you are a first offender with a clear criminal record. After having considered all these mitigating factors, I will deduct 2 years from your interim sentence.
10. Your final sentence now stands as **10 years imprisonment for each count.**
11. Having due regard to the 'totality principle' in sentencing, I order the 10 years imprisonment of each count to run **concurrently.**
12. You have been in remand custody for 5 weeks, since the Judgment was pronounced. In terms of section 24 of the Sentencing and Penalties Decree, that 5 weeks is ordered to be reduced from your final sentence of 10 years imprisonment. **Now, it is 9 years, 10 months and 3 weeks.**
13. As a final note, I must say that this court does endorse the Pastor's comment that people do mistakes or faults, but they be given another chance for life. But, I still recall you telling the court that you will still be continuing your sexual relationship with Ms. E.V., had she not got pregnant. Your attitude with nihilism is unpardonable. A 49 year old married man with four grown up children, when engaged with a girl who is almost in the same age of his elder daughter, would have thought more responsibly about the repercussions his family has to face over his conduct. Thus, you will receive an immediate custodial sentence with a non-parole period of 7 years.



  
Janaka Bandara  
Judge

**At Suva**

Office of the Director of Prosecution for State

Office of the Legal Aid Commission for Accused