

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

**CRIMINAL CASE NO: HAC 204 OF 2013**

**BETWEEN** : STATE

**AND** : VATILIAI GONESAU

**Counsel** : Ms. Vavadakua for the State  
: Mr. Tawake for the Accused

**Date of Sentence** : 26<sup>th</sup> May 2014

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**SENTENCE**

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Since the victim is still ten (10) years of age, I order her name and the identity to be suppressed in any publication. Hereinafter, she will be called Ms. S.V.

1. Mr. Vatiliai Gonesau, you stand convicted for the following two counts, "Attempted Rape contrary to section 208 of the Crimes Decree No. 44 of 2009 and "Rape" contrary to section 207 (1) (2) (b) of the Crimes Decree No. 44 of 2009, upon your own plea of guilt.
2. The Statement of Offence and the Particulars of the Offence are as follows:

**First Count**  
*Statement of Offence*

**ATTEMPTED RAPE:** Contrary to Section 298 of the Crimes Decree No. 44 of 2009

*Particulars of Offence*

**VATILIAI GONESAU** on the 4<sup>th</sup> day of May 2012 at Navunimono village, Tailevu in the Central Division, attempted to have carnal knowledge of S.V. without her consent.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**VATILIAI GONESAU** on the 17<sup>th</sup> day of May 2012 at Navunimono village, Tailevu in the Central Division, penetrated the anus of S.V., a child under the age of 13 years, with his finger.

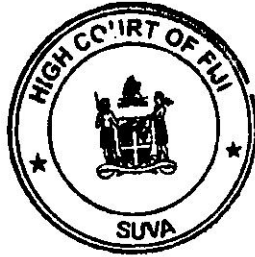
3. According to the Agreed Summary of Facts, on 4<sup>th</sup> of May 2012, you called Ms. S.V. to you, while she was on the way to Sunday school choir practice. When she came, you had lifted her and taken her to the village hall. After placing Ms. S.V. on a table there, you had removed her panty and laid on top of her. Though you had tried to insert your penis into her vagina, you had to run away as you overheard some people talking and coming towards the hall.
4. Then, on 17<sup>th</sup> of May 2012, when Ms. S.V. came to your home asking for a box of matches, you had lifted her and taken to the bed, after closing the front door. You had removed her under garments along with yours and laid on top of her. After trying to insert your penis into her vagina, you had turned her around forcefully and inserted your penis into her anus. When you heard someone knocking on the door, you had stopped what you were doing.

5. The medical findings of the doctor who examined Ms. S.V. on 18<sup>th</sup> May, the following day, confirm that there was a fresh tear of 0.5cm at 1 o'clock position on the anal opening. The doctor's professional opinion is that the 'fresh injury at the anal opening resulted from sexual abuse.'
6. The maximum sentence for 'Rape' under the Crimes Decree, as well as the Penal Code, is life imprisonment. For a rape on child, the tariff ranges from 10 to 15 years imprisonment. (see *Mark Mutch v The State, Criminal Appeal No. AAU 0060 of 1999, Fiji Court of Appeal*; *State v Lepani Saitava, Criminal Case No. HAC 10 of 2007, High Court, Suva*; *The State v AV, Criminal Case No. HAC 192 of 2008, High Court, Suva*; *State v VV, Criminal Case No. 084 of 2009, High Court, Suva* and *State v Waqabaca, Criminal Case No. HAC 139 of 2008, High Court, Suva*, *State v NK, Criminal Case No. HAC 155 of 2010*, *State v Nacanieli Yavala, Criminal Case No. HAC 129 of 2012* and *State v Simone Taleusila, Criminal Case No. HAC 11 of 2010*).
7. First, for the offence of 'Rape', I take a starting point of 12 years imprisonment.
8. At the time you committed the charged offences, the victim was a small girl of 10 years. You, without any respect to her childhood, took the advantage of her innocence and vulnerability and exposed her to sexual activities, not only once, but twice. The emotional and psychological suffering of the victim as a result of your acts, is undoubtedly enormous. That is evident from the Victim Impact Statement as well. Now, Ms. S.V., is said to be afraid, having sleeping disorder and finding it difficult to follow the school work. The alarming factor is that, according to this report, she is being teased by the other children in the village by calling your name. All these things will affect the psychological well-being of the victim. These aggravating features will increase your sentence by 5 years imprisonment.
9. In mitigation, you aver that you are still 20 years of age and was only 18, at the time of the commission of the offences. You are a first offender. Since your father passed away in 2012, you looked after your mother by farming and selling whatever you are able to produce. You had to drop your studies

due to peer pressure when you reached Form 4. I reduce 2 years for all these mitigating factors.

10. Now your sentence stands at 15 years imprisonment. You deserve to have a reduction of a third from this interim sentence, as you pleaded guilty to the charges at the first available opportunity and not only saved the time and resources of the court, but saved the victim of being traumatized again by recalling her experiences with you. This, in turn, showed your true colours of remorse. Therefore, your final sentence for the offence of 'Rape' is 10 years imprisonment.
11. The maximum sentence for the offence of Attempted Rape is 10 years imprisonment. The tariff ranges from 12 months to 5 years imprisonment. [State v Bulivou [2010] FJHC 382; Bulimaiwai v State [2005] FJHC 261; HAA0068J.2005, 2<sup>nd</sup> September 2005 and State v Samuela Kiniboi Criminal Case No. HAC 162 of 2012].
12. The aggravating and mitigating circumstances, which have to be considered for the 1<sup>st</sup> count of Attempted Rape, are almost the same as stated in paragraphs 8 and 9. Hence, I conclude that a term of 4 years imprisonment for the offence of Attempted Rape would reflect your culpability. Your sentence for the first count of Attempted Rape is 4 years imprisonment.
13. Having considered the totality principle, I order both the sentences of 4 years imprisonment and 10 years imprisonment for 1<sup>st</sup> and 2<sup>nd</sup> counts respectively, to run concurrently.
14. I note that you are in remand custody since 19<sup>th</sup> February 2014 in relation to this case. That is **three (3) months and one (1) week**. In terms of section 24 of the Sentencing and Penalties Decree, I order that period to be deducted from your final sentence of 10 years. Now your sentence is **nine (9) years, eight (8) months and three (3) weeks**.

15. Finally, having considered your young age, still being twenty (20), I decide not to order a non-parole period.



Janaka Bandara  
Judge

**At Suva**

Office of the Director of Prosecution for State  
Office of the Legal Aid Commission for Accused