

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

**CRIMINAL CASE NO: HAC 348 OF 2011**

**BETWEEN** : **STATE**

**AND** : **MATAIASI VESUKULA**

**Counsel** : Mr. Prasad Y. with Ms. Vavadakua A. for the State  
Mr. Fesaitu M – Duty Solicitor for Accused

**Date of Hearing** : 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> January 2014

**Date of Summing Up** : 31<sup>st</sup> January 2014

**Date of Judgment** : 31<sup>st</sup> January 2014

**Date of Sentencing** : 28<sup>th</sup> February 2014

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**SENTENCE**

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1. You, Mataiasi Vesukula, stand convicted for one count of 'Rape' contrary to section 207 (1) and (2) (c) and (3) of the Crimes Decree No. 44 of 2009 after a full trial with assessors. The court concurred with the unanimous opinion of guilty of the assessors on 31<sup>st</sup> of January, 2014. The particulars of the offence says as follows:

**MATAIASI VESUKULA** you have been charged with the following offence:

First Count  
*Statement of Offence*

**RAPE:** Contrary to section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

**MATAIASI VESUKULA** on the 18<sup>th</sup> day of October 2011 at Nakorolevu Village in the Western Division, penetrated the mouth of A.M. a child under the age of 13 years with his penis.

2. The victim was 8 years at the time of the incident and thus was a child. The tariff for the offence of rape of a child is a sentence between 10 – 15 years. The maximum sentence for Rape is life 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).
3. It was revealed during the trial that you had called Ms. A.M., the complainant to your house pretending that you want to give her rice. You admitted in evidence that you were wearing only a towel and underwear when the complainant came along with you to your house. You admitted that you applied oil on your body and changed yourself in front of the complainant. Ms. A.M. told court, in the course of these acts, you asked her to suck your penis and put your penis into her mouth.
4. In this background, I select a starting point of 10 years imprisonment in finalizing your sentence.
5. Now, I turn to see the aggravating factors of your offending. The victim was just 8 years of age at the time of the incident. You were 19 years of age by that time and the age gap is 11 years. You are an uncle of this small girl. You lived in a very much close by house to hers. Both these factors do show that you had a considerable amount of control over this small girl. When you misused that 'control', it amounts to a serious breach of trust. For these aggravating features, I increase your sentence by 3 years.
6. This court cannot identify any specific mitigating factors in your mitigation submissions. You are not a first offender. You did not show any remorse for

your action and you simply allowed the victim girl to recall all her traumatic experiences with you by compelling her to give evidence in court.

7. Nevertheless, I note that you are a farmer and supporting your mother. You claim to be an active member in your community and engaged in sports by playing Rugby for the Namara Rugby Team whilst lending a helping hand in village projects. Especially considering the very young age that you got involved to this crime, this court wishes to grant you a concession. Therefore, 2 years imprisonment is reduced for all the grounds that you have averred in your mitigation.
8. Now your final sentence stands at 11 years imprisonment.
9. According to the case record, you are in remand custody since 8<sup>th</sup> of July 2013 in connection to this case. That's roughly 8 months. In terms of section 24 of the Sentencing and Penalties Decree it is hereby ordered to reduce that period from your final sentence. Then it remains at 10 years and 4 months imprisonment.
10. Even though this court is ready to grant a concession for your young age, it has to give a serious consideration to the plight of the small victim girl as well. Whereas the Victim Assessment Report reflects, the girl would have ashamed staying in the village and attending the school. She was exposed to the actual sexual activities by your conduct. She might have to carry this trauma for her entire life. Thus, your sentence will have to reflect the gravity of your wrong doing.
11. In the light of the above, your final sentence of 10 years and 4 months imprisonment is ordered to be served with a minimum term of 7 years before being eligible for parole.
12. You have 30 days to appeal to the Court of Appeal.

Janaka Bandara  
**JUDGE**

**At Suva**

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