

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. 78 of 2013

STATE

V

SAMISONI RABAKA

Counsel: Ms A. Vavadakua for the State
Accused in person.

Dates of trial: 15,17 and 18 July 2014
Date of Conviction: 18 July 2014
Date of Sentence: 25 July 2014

SENTENCE

The accused was convicted in this Court after trial of the following count:

COUNT ONE***Statement of Offence***

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

Particulars of Offence

SAMISONI RABAKA on the 5th day of February 2013, at Veikoba, in Valelevu in the Central Division, penetrated the vagina of **XXX**, a child under the age of 13 years, with his finger.

2. The facts of the case were that on the 5th February 2013 the accused was living with a family being a couple and their young son and daughter aged 3. The victim (now aged 4) went into the witness box and very reluctantly and shyly told the Court that one day she woke up and saw "Sami" (whom she identified as the accused). He had "touched" her and caused "kaka" (a lot of pain) – pointing to her genital area.
3. When asked what he used to do "kaka", she stood up and showed the Court her right hand forefinger. She said that he put it inside her.
4. The next day when her mother was bathing her she noticed signs of injury to her genitals. There was also a seepage of blood. When questioned by the mother the girl told mother that Sami had done "kaka" to her there. The mother immediately reported to the Police and took the girl to CWM hospital for a medical examination.

5. The mother had said that in the early hours of 5 February the accused had come to the room where she was sleeping with the children and had propositioned her. She was angry and went outside to sit for a while, leaving the accused alone in the room with the children.
6. A medical officer from CWM hospital told the Court that her medical examination of the child revealed a tear to her vaginal area which could not have occurred naturally and her findings were consistent with vaginal penetration.

The Law

7. The tariff for sentences for rapes of children has now been set by the Court of Appeal in **Anand Abhay Raj** AAUU 38 of 2010. In that case the Court said:

“Sadly there are now many cases of rape of children coming before the High Court and the sentences on conviction have conformed to an accepted range. Although rapes of children are bad enough, it is even more abhorrent that many of the perpetrators of these crimes are family members or other persons in a position of trust”

The Court decided that rapes of children should attract a sentence in the range of 10-16 years.

The Accused

8. The accused who chose to represent himself through these proceedings is 35 years of age and a farmer educated to Form 5. His parents are both suffering from the aftermath of strokes and he is the sole earner for them.

9. He has 2 previous convictions within the past 10 years, both for offences denoting violence, and these will not afford him any credit for good character.
10. Even at a post-conviction hearing to hear mitigation he still maintained that he did not do the crime – a position that displays a distinct lack of remorse.

The Sentence

11. In taking a starting point of 14 years the Court now turns to aggravating features. It is aggravating that he would put a four year old, vulnerable witness, through the ordeal of giving evidence to the Court. It is unknown what psychological effect the actual crime will have on the child but it was apparent that reliving the horrific events of that night was extremely stressful for her. The evidence could only be elicited by her whispering into the ear of a patient court clerk, while she sat on her father's knee. Despite the tariff for rape of a child, this aggravation deserves additional time and I therefore add a term of two years. As an adult living in the house, he was also in a position of trust which he breached in an odious manner. For this breach of trust I add a further one year.
12. There is no real mitigation available to the accused – he cannot claim a clear record, nor can he claim discount for remorse. His family circumstances should not afford him a discount because there is evidence before the Court that he was not living with the parents. However as an act of mercy I deduct one year from the sentence for his mitigation. The accused will serve a sentence of 16 years for this crime and will serve 15 years of that sentence before being eligible for parole.

13. Although the accused will not be anywhere near this family for fifteen years, I am duty bound to continue the Domestic Violence Restraining Order that is already in place. It is to continue in force until further order of this Court.



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

At Suva
25 July, 2014