

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

**Criminal Case No: HAC 70 & 71 of 2013**

**BETWEEN:**

**THE STATE**

**AND:**

**JALE MARIO**

**Counsel:** Mr. S. Vodokisolomone for State

Mr. M. Fesaitu for Accused

**Date of Hearing:** 15-17 December 2014

**Date of Sentence:** 19 December 2014

**SENTENCE**

- [1] Jale Mario, you were tried and convicted on four counts of rape and one count of indecent assault. The maximum penalty for rape is life imprisonment. The maximum penalty for indecent assault is 5 years' imprisonment.
- [2] The facts as proven by the evidence reveal a disturbing pattern of sexual abuse of the victims by you. The victims are your nieces. Their father is your elder brother. The first victim was 10 years old when you raped her twice, and when she was 11 years old you raped her once. The second victim was 11 years old when you indecently

assaulted her and when she was 12 years old you raped her. The two victims grew up next to your home at Qaralevu Settlement, Tunuloa, Cakaudrove in Vanua Levu.

[3] The first episode of rape occurred in the first term school holidays in 2012 when your niece came to your house to get some fruits. She was in Year 5 in 2012. While she was in your house, she went to the toilet to relieve herself. You followed her inside the toilet and forced her on the floor. You had sexual intercourse with her for five minutes after removing her clothes. She felt physical pain. You covered her mouth with your hand to prevent her from raising alarm when you were having sexual intercourse with her. After having sex, you threatened to kill her if she complained to anyone.

[4] The second episode of rape occurred in the second term of the school holidays in 2012, when your niece came to your house to request for a newspaper. You pulled her inside a bedroom and forced her on a mattress. You had sexual intercourse with her for three minutes after removing her clothes. She felt physical pain. Like the first episode, you covered her mouth with your hand to prevent her from raising alarm, and then threatened to kill her if she complained to anyone.

[5] The third episode occurred on 22 September 2013, when your niece came to your house to return a plate on her mother's directive. When she entered your house, you pulled her inside a bedroom and removed her clothes. You then penetrated her vagina with your tongue. She felt physical pain on this occasion as well. You threatened to kill her if she raised alarm.

[6] The episode of indecent assault was committed in the second school term of 2012 when your niece accompanied her younger brother to your house to request for a newspaper. You invited both children inside your bedroom and made them lie on the floor. You gave your nephew a book to read while you fondled your niece's breasts. Your nephew who was 9 years old witnessed the indecent assault. After assaulting your niece, you threatened your niece to keep quiet or you would do something to her.

[7] The fourth episode of rape occurred on 16 August 2013, when your niece came to your house to get some fruits. You subdued her with a kitchen knife and pulled her inside a bedroom. You forcefully removed her clothes and had sexual intercourse

with her. When she got up, she saw blood on her genital area. You threatened to kill her if she complained to anyone.

[8] The aggravating factors are many. There are two victims. The child victims were vulnerable due to their tender age. At that age, the girls reach puberty and they undergo physical and emotional changes. The sexual assaults were repeated for a period of 1½ years. The victims' mouths were covered with hand during the sexual intercourse. The sexual intercourse was traumatic and physically painful for the victims. One victim bled after sex. On one occasion, the victim was subdued with a kitchen knife. The episodes of sexual assaults were followed by threats to kill if the victims complained to anyone. The victims took the threats seriously because they remained quiet for a long time until their mother prodded out the complaint from one of the victims. The indecent assault was committed in the presence of another child (nephew) who witnessed the assault on his sister. The victims trusted you because you were their uncle and neighbour. It is trust that builds human relationships. Without trust there will be no relationships, no moral values and no humanity. You grossly breached the trust of your nieces for your own sexual gratification. Relationships have been harmed when you crossed the moral boundaries that define humanity.

[9] In mitigation, your counsel told the Court that you are 44 years old and a farmer by profession. You never married. The only significant mitigating factor is that you are a first time offender. You have been in custody on remand for 1 year and 2 months.

[10] In sentencing you, regard must be made to the existing sentencing guidelines for indecent assault and rape. The tariff for indecent assault is 1 to 4 years' imprisonment depending on the nature of the assault (Rakota v The State Criminal Appeal HAA 0068 of 2002S). The tariff of 10 to 16 years for rape was recently endorsed by the Supreme Court in Raj v The State (unreported Appeal No. CAV0003 of 2014; 20 August 2014). In that case, a step-father raped his 10-year old step-daughter on four occasions and indecently assaulted her on one occasion. The unlawful conduct was said to be going on for a little more than a year. In sentencing the offender, the trial judge used a starting point of 12 years for rape, and after adjusting for mitigating and aggravating factors and the remand period of 1 year, arrived at a term of 16 years' imprisonment. For the indecent act of fondling the victim's breasts, the offender was

sentenced to 3 years' imprisonment. All sentences were made concurrent. The offender unsuccessfully appealed against his sentence to the Court of Appeal. On a further appeal against sentence, the Supreme Court refused to grant special leave to the offender saying the high level of sentence had its origin in the following serious aggravating factors:

- (i) The Petitioner was the complainant's stepfather who should have protected her. Instead he breached the trust expected of him, and the breach was gross.
- (ii) The rape offences took place continuously over a long period of time. Such an experience "will surely scar her for the rest of her life" [Record p24]
- (iii) She was a child of 10 years. It is not clear what factors the learned judge took into account when fixing the starting point on the tariff. The age of the child, if very young, could yet be an aggravating factor. In this case it is more likely and appropriate that it be put into consideration for arriving at the tariff only, and not added on later as an aggravating factor.
- (iv) The frequency of the crime against children in Fiji, and therefore the need for deterrence.
- (v) She had been subjected to threats to kill her, assaulted the injured by the Petitioner.
- (vi) She was observed to be in real fear of the Petitioner. Such threats besides causing fear and anxiety in the victim over a long period, had postponed the exposure of these offences.

[11] Rape of a child is a very serious crime especially if it is committed by a member of the child's family. Only time will tell the long term impact of this crime on the physical and social development of the victim. Sentences imposed by the courts for this crime must signify that society denounce any form of sexual abuse of children. In a case like this, deterrence (both special and general) and denunciation are the principle purposes of the sentence. Rehabilitation is of less value especially when the offender refuses to take any responsibility for his unlawful conduct.

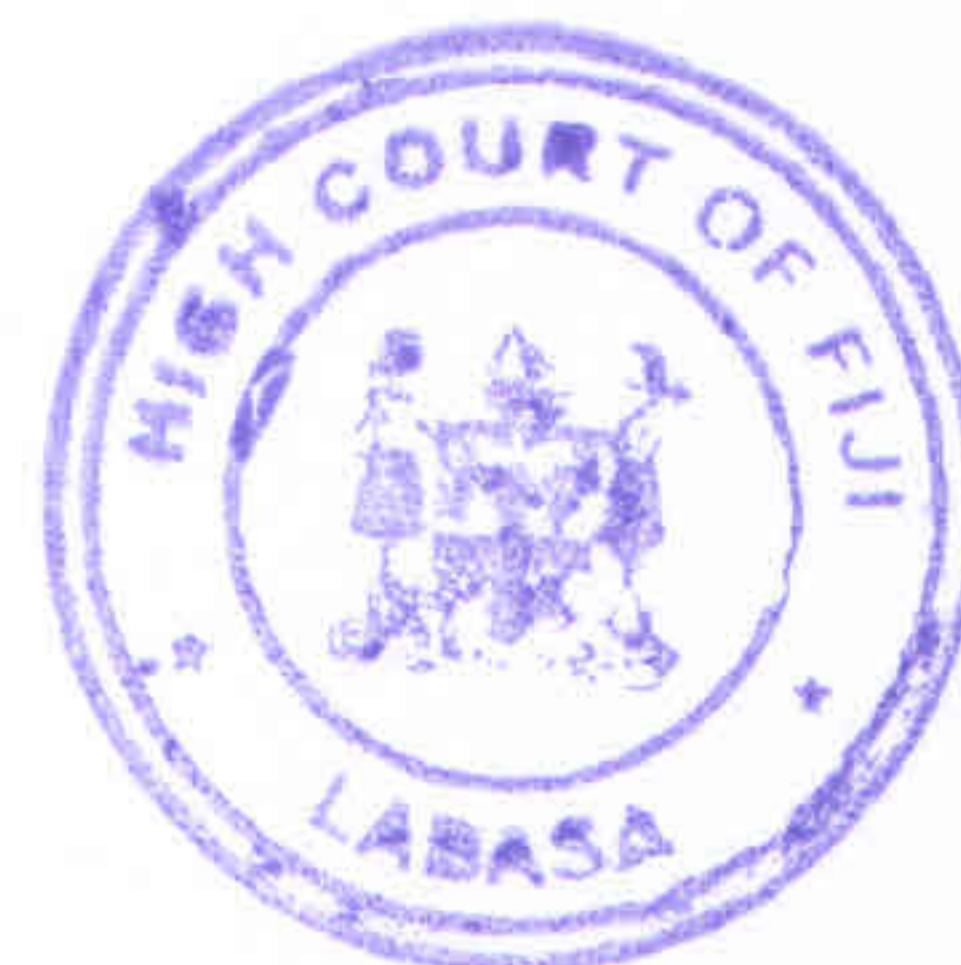
[12] For the offence of rape, I use the same starting point (12 years) that was used in **Raj's** case. I increase the sentence to 20 years to reflect the serious aggravating factors that I identified earlier in my sentencing remarks. I make a reduction of 2 ½ years to reflect

your mitigating factors and 1½ years to reflect your remand period. On each count of rape, I sentence you to 16 years' imprisonment. On the count of indecent assault, I sentence you to 3 years' imprisonment. All sentences are to be served concurrently. Your total sentence is 16 years' imprisonment. You are not eligible for parole until you have served 12 years.



Daniel Goundar

**JUDGE**



At Labasa

19 December 2014

**Solicitors:**

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused