

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**HIGH COURT CRIMINAL CASE NO. HAC 231 OF 2011**

**BETWEEN** : STATE

**AND** : NAYATE VATU

**Counsel** : Ms S. Kiran for the State  
Mr. R. Kumar (L.A.C) for the Accused

**Date of Hearing** : 20 April 2015

**Date of Judgment:** 23 April 2015

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**SENTENCE**

**Child Rape**

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[1] On the 26<sup>th</sup> March 2015 in this Court the accused entered a plea of guilty to two counts of lingual rape of a four year old girl. On the following day he was convicted of both counts after he had agreed the relevant facts of the case. He now comes before this Court for sentence on those two convictions.

[2] The facts of the case were that on the 5<sup>th</sup> December 2011 the accused, 18 years of age, was staying at the house of his cousin and her daughter Seini (not her real name) who was aged 4 years at the time. At about 6.00 pm Seini's mother (the cousin) was outside raking leaves while the accused stayed inside taking

care of Seini and her younger brother. The accused pulled down Seini's panty and used his tongue to lick, penetrate and bite her vagina. He then left the house to play sport and Seini told her mother what the accused had done to her. The matter was reported to the police and a medical examination conducted. That examination revealed a tenderness on the right side of her exterior genitalia but no other physical findings. The hymen was still intact. In an interview under caution the accused admitted the sexual assault after he had been sniffing glue and he "could not stop himself". He admitted penetrating her with his tongue and told the police he had done the same thing to her in March 2011, when he was 17 years old and thus a juvenile.

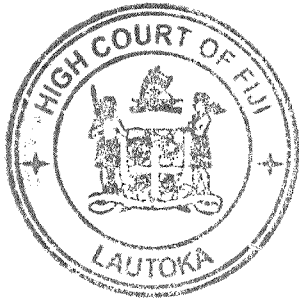
- [3] The maximum penalty for rape is life imprisonment. It is now well settled, and confirmed by the Supreme Court in Anand Abhay Raj CAV003.2014 that the tariff for rape of a child is 10-15 years imprisonment.
- [4] The accused at the time of the rape in March 2011 was a juvenile but by December 2011 he had reached the age of 18 years, an adult in law.
- [5] In a comprehensively written submission, his counsel submits that the accused is presently working as a security officer and he supports his siblings on his salary. Their father is deceased and the mother has emigrated. The accused has a clear record hitherto and is young. He has pleaded guilty but not at the earliest opportunity. By doing so, it is submitted, he has saved the young girl from giving evidence and reliving the ordeal. He has sought forgiveness from the girl's family by way of a traditional apology which has been accepted. He has thereby shown remorse and repentance.
- [6] Counsel for the State understandably stresses the authorities which all strictly seek to protect the sexual sanctity of children and give acknowledgement to the trauma caused and effect on the child's own journey to sexual maturity.
- [7] It appears to be extremely important in this case that a balance be struck between expectations of the community that such activity be punished and retribution be afforded the victim with the need to recognize the folly of such

a young man with a clean record and the destruction that a long sentence would wreak on his entry into adulthood. Whilst every attempt must be made to keep a young offender from prison and to rehabilitate him (her) when faced with a serious crime or crimes, a Court must act in the interests of the public and their expectations and act to deter others who might want to follow the same course of action.

- [8] It is particularly aggravating in this case that the young accused prior to the second incident had been sniffing glue, a pursuit that appeared to rob him of any moral duty to the child he was supposed to be temporarily taking care of.
- [9] To reflect the offending, not the offender, I take a starting point of 10 years at the bottom of the tariff for this offence. To reflect the aggravating features of breach of trust and of his resorting to narcotics before the December abuse I add three years to that starting point. In recognition of his strong mitigation of clean record, his duty to family, and his obvious remorse, I deduct those three years bringing the interim sentence back to ten years. For his extreme youth and his plea of guilty saving the child from giving evidence I deduct a further three years, bringing his sentence down to one of seven years. I order that he serve five years before he be eligible for parole. That is the sentence for the second count of offending in December 2011 when the accused was 18 years old. For the first count of similar offending in March of 2011 when he was a juvenile I am constrained by the Juvenile Act to pass a sentence of no longer than 2 years and that is the sentence I pass to be served concurrently with the sentence for the second count.
- [10] I am aware that this final sentence of seven years is below the tariff for rape of a child and it is in no way meant to distort the tariff already recognized by the Supreme Court. It is a lenient sentence in recognition of the youth of the accused and his remorseful plea of guilty saving the child from giving evidence.

[11] A domestic violence restraining order is issued against the accused as the perpetrator and in favour of the unnamed victim and this order will remain in force until further order.

[12] To conclude the accused will serve a sentence of two (2) years for Count 1 concurrently with a sentence of seven (7) years for Count 2. He will serve a minimum of five (5) years before being eligible for parole.



Paul K. Madigan

Judge

At Lautoka

23<sup>rd</sup> April 2015