

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 033 OF 2015LAB

STATE

V

ALBERT HERBERT VALENTINE

Counsels : Mr. L. Fotofili for State  
Ms. L. Raisua for Accused

Hearing : 15 September, 2015

Sentence : 18 September, 2015

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**SENTENCE**

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1. On 15 September 2015, in the presence of your counsel, you pleaded guilty to the counts in the following information:

***FIRST COUNT***

***Statement of Offence***

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

***Particulars of Offence***

**ALBERT HERBERT VALENTINE**, on the 27<sup>th</sup> day of June 2015, in Qamea, in the Northern Division penetrated the vagina of **L.V.**, a child under the age of 13 years, with his tongue.

***SECOND 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***

**ALBERT HERBERT VALENTINE**, on the 27<sup>th</sup> day of June 2015, in Qamea, in the Northern Division penetrated the mouth of **L.V.**, a child under the age of 13 years, with his penis.

***THIRD COUNT***

***Statement of Offence***

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

***Particulars of Offence***

**ALBERT HERBERT VALENTINE**, between the 15<sup>th</sup> day of June 2015 and 25<sup>th</sup> day of June 2015, in Qamea, in the Northern Division penetrated the vagina of **G.L.**, a child under the age of 13 years, with his tongue.

***FOURTH COUNT***

***Statement of Offence***

**SEXUAL ASSAULT**: Contrary to section 210 (a) of the Crimes Decree 44 of 2009.

***Particulars of Offence***

**ALBERT HERBERT VALENTINE**, between the 15<sup>th</sup> day of June 2015 and 25<sup>th</sup> day of June 2015, in Qamea, in the Northern Division indecently and unlawfully assaulted **G.L.**, by rubbing his penis on her vagina.

***FIFTH COUNT***

***Statement of Offence***

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

***Particulars of Offence***

**ALBERT HERBERT VALENTINE**, between the 24<sup>th</sup> day of April 2015 and the 11<sup>th</sup> day of May 2015, in Qamea, in the Northern Division penetrated the vagina of **C.F.V.**, a child under the age of 13 years, with his tongue.

***SIXTH 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***

**ALBERT HERBERT VALENTINE**, between the 24<sup>th</sup> day of April 2015 and the 11<sup>th</sup> day of May 2015, in Qamea, in the Northern Division penetrated the mouth of **C.F.V.**, a child under the age of 13 years, with his penis.

2. The prosecution presented the following summary of facts:

"The Accused in this matter is Albert Herbert Valentine, aged 36 years, in 2015. He has been charged for five counts of Rape and one count of Sexual Assault.

On the 27<sup>th</sup> day of June 2015, in Qamea in the Northern Division, the Accused, the 5 years old niece of the Accused was playing outside of his house. The Accused told the 5 year old child, L.V. to go inside the house and change into a skirt and return to play. The child went and changed into a skirt and went back. When the Accused saw her return wearing a skirt, he told her to accompany him inside his house. There he took the child to his bed, took her under the bed covers and lifted her skirt, parted her legs and her panty and inserted his tongue into her vagina, by licking. Thereafter, the Accused took his penis and penetrated it inside the mouth of the 5 years old child and told the child to swallow his semen.

Before the above date, that is between the 15<sup>th</sup> of June 2015 and the 25 of June 2015, the Accused called his cousin who was 9 years old, G. L, into his house. When she entered his house, the Accused took her into his room. He then lay her on the bed and removed her panty. He then inserted his tongue into her vagina by licking. Thereafter, he proceeded to rub his penis on her vagina and thereby indecently and unlawfully assaulted her.

Prior to that incident, between the 24<sup>th</sup> day of April and the 11<sup>th</sup> day of May 2015, the Accused had visited his 7 year old cousin, C.F.V. and her parents. As they were alone in the house, the Accused called C.F.V. into the sitting room, he was lying facing upwards. He told the 7 year old to come and sit around his face area. In that way his mouth was directly in line with her vaginal area and he then proceeded to insert his tongue into her vagina by licking. Thereafter, he proceeded to penetrate his penis into her mouth."

3. The court then checked with your counsel to see whether or not you had admitted to all the elements of "rape" and 'sexual assault" in counts no. 1 to 6. Through your counsel, you said that you admitted all the particulars of offences in counts no. 1 to 6, and that you agreed with the prosecution's summary of facts. Through your counsel, you admitted all the elements of "rape" in counts no. 1, 2, 3, 5 and 6, and the elements of "sexual assault" in count no. 4. As a result of the above, the court found you guilty as charged on all counts and convicted you on all counts.
4. "Rape" is always treated seriously by our lawmakers and it carries a maximum sentence of life imprisonment. The Honorable Chief Justice via the Supreme Court case of **Anand Ahay Raj v The State**, Criminal Appeal Case No. CAV 0003 of 2014, has set the tariff for the rape of juveniles a sentence between 10 to 16 years imprisonment.
5. For "sexual assault" the maximum sentence is a sentence at 10 years imprisonment. In **The State v Epeli Ratabacaca Laca**, Criminal Case No. HAC 252 of 2011, High Court, Suva, His Lordship Justice Paul Madigan set the tariff at a sentence between 2 to 8 years imprisonment. The more serious the assault, the higher the sentence will be. Of course, the final sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factors were as follows:
  - (i) Breach of Trust. The three child complainants were related to the accused. Complainant no. 1 was 5 years old, and the accused was her uncle. The second complainant was 9 years old, and the accused was her cousin. Likewise, the third complainant was 7 years old, and the accused was her cousin. The accused was 36 years old. The age difference between the complainants and the accused was large, and in a sense, he stood in a position of trust to them. As an elder and relative, his responsibility to the complainants was to see that no-one abused them. Yet he was the very one that abused them sexually. As such, he abused the trust the complainants had in him;
  - (ii) The rape of children. Raping children is a despicable crime. It is a direct attack on the most vulnerable in our society. Children are the future of this country, and it is the duty of

the court to pass severe sentences on those that attack them sexually, as a deterrence to others. You must not complain when your liberty is taken away to pay for your crimes;

- (iii) By offending against the three child complainants, you showed no regard to their human rights and dignity.

7. The mitigating factors were as follows:

- (i) At the age of 36 years, this is your first offence;
- (ii) Although you pleaded guilty to the charges 2 months 5 days after first call in the High Court, you nevertheless saved the court's time, and the need for the three child complainants to re-live their ordeal in the courtroom, by giving evidence;
- (iii) You had been remanded in custody for 2 months 17 days, since 1 July 2015.
- (iv) You fully co-operated with the police during their investigation, and you admitted the offence when cautioned;
- (v) You are remorseful, as shown by your early guilty plea.

8. On count no. 1 (rape), I start with a sentence of 14 years imprisonment. I add 4 years for the aggravating factors, making a total of 18 years imprisonment. For pleading guilty to the offence, I deduct 3 years from the 18 years total. I make another 1 year deduction for being a first offender. I deduct another 3 months for time already served while remanded in custody. I deduct another 9 months for being remorseful. I deduct another 1 year for co-operation with police. Total deduction is 6 years from 18 years, leaving a balance of 12 years imprisonment. On count no. 1 (rape), I sentence you to 12 years imprisonment.

9. I repeat the above process and sentence for the other rape counts, that is, counts no. 2, 3, 5 and 6.

10. As for count no. 4 (sexual assault), I sentence you to 6 years imprisonment.

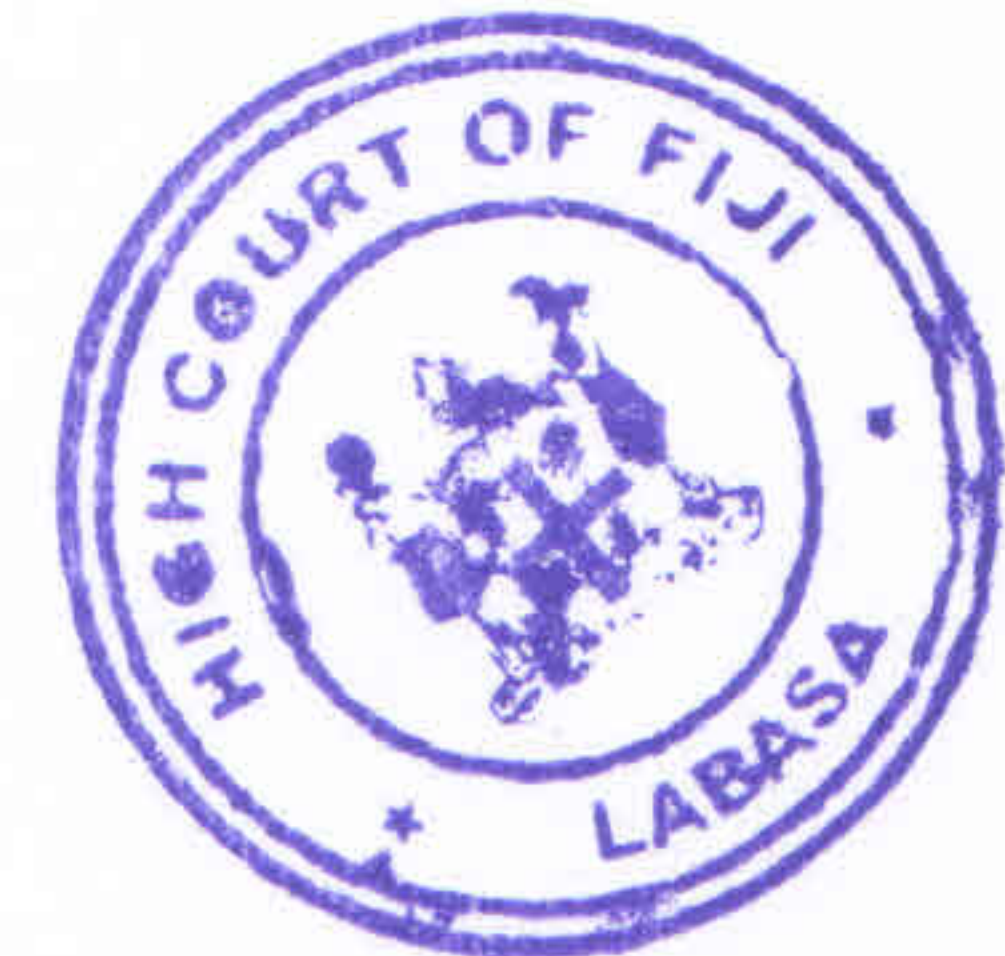
11. The summary of your sentences are as follows:

- (i) Count no. 1 - Rape - 12 years imprisonment.
- (ii) Count no. 2 - Rape - 12 years imprisonment.
- (iii) Count no. 3 - Rape - 12 years imprisonment.

- (iv) Count no. 4 - Sexual Assault - 6 years imprisonment.  
(v) Count no. 5 - Rape - 12 years imprisonment.  
(vi) Count no. 6 - Rape - 12 years imprisonment.

12. Because of the principle of totality of sentencing, I direct that all the above sentences are to be made concurrent to each other, that is, a final total sentence of 12 years imprisonment.
13. Mr. Albert Herbert Valentine, for raping and sexually assaulting the three child complainants, between 24 April and 27 June 2015, at Qamea in the Northern Division, I sentence you to 12 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
14. The name of the three child complainants are permanent suppressed to protect their privacy.

  
**Salesi Temo**  
**JUDGE**



**Solicitor for the State** : **Office of the Director of Public Prosecution, Labasa**  
**Solicitor for the Accused** : **Office of the Legal Aid Commission, Labasa**