

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

**CRIMINAL CASE NO: HAC. 083 of 2010**

**STATE**

**V**

**SBN**

**Counsel** : Ms. S. Puamau for State  
Ms. M. Tarai for Accused

**Dates of Hearing** : 04<sup>th</sup> April – 07<sup>th</sup> April 2016  
**Date of Summing Up:** 07<sup>th</sup> April 2016  
**Date of Judgment** : 08<sup>th</sup> April 2016  
**Date of Sentence** : 11<sup>th</sup> April 2016

(The names of the accused and of the complainant are suppressed. Accordingly, the accused will be referred to as SBN and the complainant as SM)

**SENTENCE**

1. SBN, you were charged with the following offence;

*Statement of offence*

**Rape:** Contrary to Section 207 (1)(2)(c) of the Crimes Decree, No. 44 of 2009.

*Particulars of offence*

**SBN** on the 05<sup>th</sup> day of April 2010, at Lami, in the Central Division, penetrated the mouth of **SM** with his penis without her consent.

2. After a trial which lasted for four days, the assessors returned with a unanimous opinion that you are guilty of the offence of rape. This court decided to accept the unanimous opinion of the assessors and found you guilty of rape as charged and convicted you accordingly.
3. In brief, you are victim's father's elder brother and your house is situated about 10 meters away from the victim's house. On 05/04/2010 before lunch time, victim was playing on your porch. You called the victim inside your house and penetrated your penis into her mouth. At the time of this incident you were 46 years old and the victim was 3 years old.
4. According to the victim impact statement, this incident has instilled fear in the victim's mind against the adult males in the society. The way she thinks and the way she perceives the world has been considerably affected by this incident.
5. Pursuant to section 207(1) of the Crimes Decree 2009 read with section 3(4) of the Sentencing and Penalties Decree 2009, the maximum punishment for Rape is life imprisonment. It is settled that the sentencing tariff for rape of a child victim is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
6. I take 10 years imprisonment as the starting point of your sentence.
7. I consider the following as aggravating factors;
  - a) breach of trust;
  - b) the age gap between you and the victim is 43 years;
  - c) the traumatic and continuing impact on the victim.
8. I consider the following as mitigating factors;
  - a) you are 52 years old, married with 3 children;
  - b) your elder son passed away in 2012;
  - c) your previous good character.
9. Your counsel wants this court to consider your good behaviour and the fact that you had participated in rehabilitation programs at the corrections centre while you were serving

the sentence imposed on you for this matter after your first trial; as mitigating factors. In my view these two factors cannot be taken into account as mitigating factors. The Corrections Departments has its own rules and regulations to reward good behaviour of inmates. I have no doubt that you have benefitted from the rehabilitation programs you say you have participated. However, every inmate is given the opportunity to follow such programs.

10. Considering the aggravating factors, I add 4 years to the starting point and deduct 2 years considering the mitigating factors.

11. Accordingly, I sentence you to 12 years imprisonment. In terms of section 18 of the Sentencing and Penalties Decree 2009, I order that you are not eligible to be released on parole till you serve 10 years of that sentence.

12. Section 24 of the Sentencing and the Penalties Decree reads thus;

*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*

13. You were arrested with regard to this matter on 07/04/2010. After the first trial, you were sentenced on 08/02/2011. The court of appeal judgment ordering a re-trial was delivered on 02/10/2015. Accordingly, you have spent a total period of 16 months and 10 days in remand and you have served a period of 4 years 7 months and 24 days. This total period of 6 years and 4 days shall be regarded as a period of imprisonment already served by you in respect of the sentence imposed on you this day.

14. In the result, you are sentenced to an imprisonment term of 12 years with a non-parole period of 10 years. Considering the time spent in custody, the remaining period to be served is;

Head Sentence – 05 years, 11 months and 26 days

Non-parole period – 03 years, 11 months and 26 days

15. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vincent S. Perera".

Vinsent S. Perera  
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Legal Aid Commission, Suva