

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 53 of 2014

STATE

V

KEN SINGH

Counsel: Ms W. Elo for the State
Mr A. Paka (L.A.C.) for the accused

Date of Trial : 11, 12 April 2016
Date of Judgment : 13 April 2016
Date of Sentence : 14 April 2016

SENTENCE

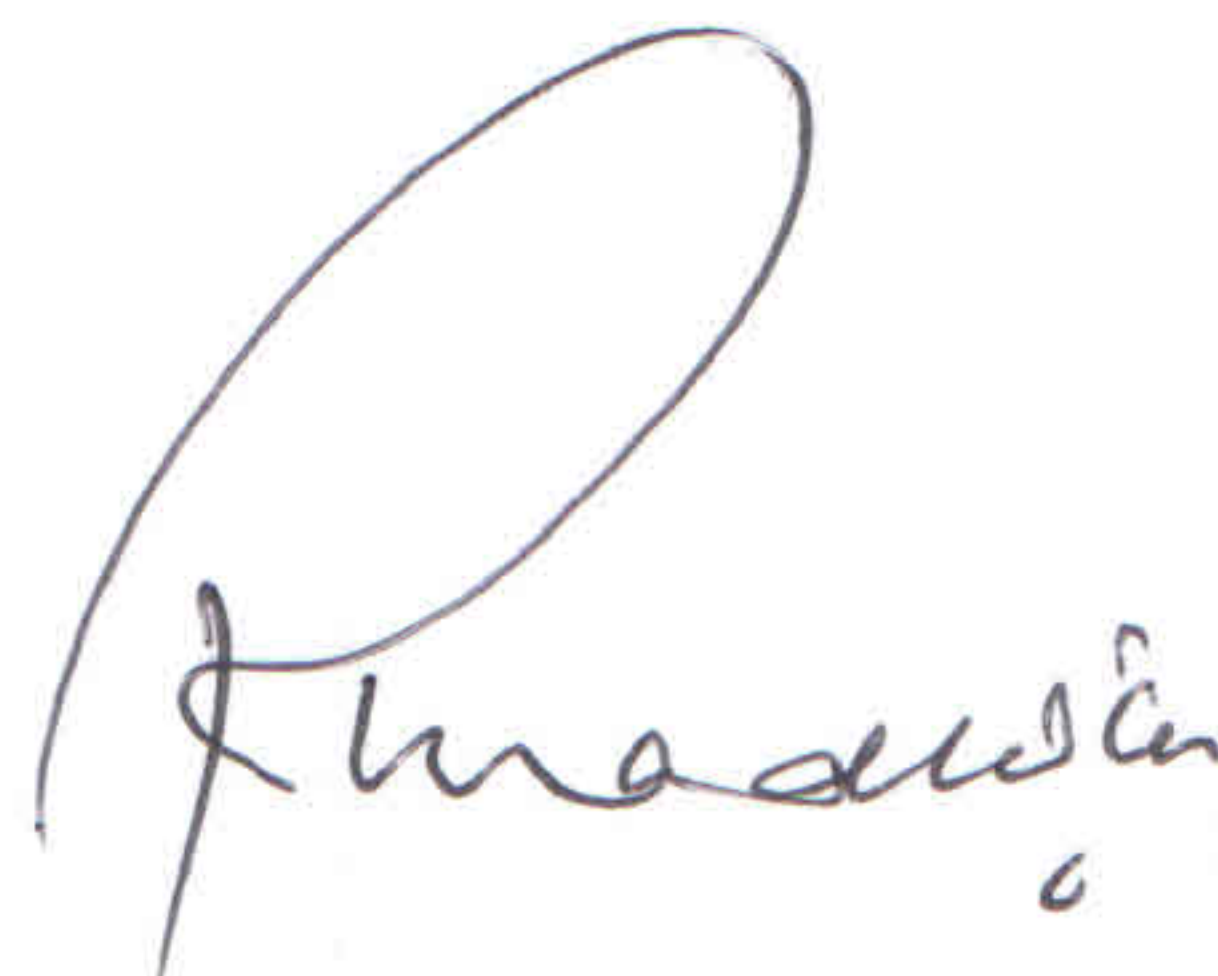
- [1] The accused has been convicted by this court of one count of digital rape of his 15 year old niece in Taveuni on 6 June 2014.
- [2] The brief facts are that the victim Molly (not her real name) had gone from Suva to stay with her maternal aunt in Taveuni in 2014 to attend school. The accused is the husband of that aunt and therefore by marriage, her uncle. At the time of the offence he was 39 years old and a farmer.
- [3] On the day in question Molly was sick and stayed home from school. Her aunt had gone to a church function and the

accused had gone to the farm. At midday she washed some clothes and went to lie down and rest. The accused returned then from the farm and entered the room in which she was resting. He drew the curtains and forcefully removed her clothes.

- [4] He then proceeded to perform sexual acts on her against her will, those acts including penetration with a finger. He subsequently sat on the bed with her and told her not to tell anybody.
- [5] She did however go to the turaga-ni-koro and told him of the whole incident. This was in turn relayed to the aunt and to the Police.
- [6] A medical examination confirmed that apart from love bites on her breasts, there was evidence of penetration by a small (the fifth) finger.
- [7] Counsel for the accused pleads in mitigation that his client is a first offender and is the father figure to five children born to his now de facto partner, a widow. That lady is now 8 months pregnant with the accused's child. Mr. Paka pleads that these difficult domestic arrangements merit merciful considerations. He cites in point the case of **Drotini** CA 24 March 2006(AAU0001 of 2005).
- [8] That case of course pre-dates the accepted authority of rape of children, being **Anand Abhay Raj CAV0003** of 2014 in which the Supreme Court affirmed the tariff to be of a term of imprisonment between 10n and 16 years.

- [9] This Court does not accept Mr. Paka's attempt to distinguish those cases on the basis that they were penile rapes while the instant case is a case of digital rape. There is no distinction in the legislation, and therefore no distinction in sentence, nor should there be. Any uninvited invasive sexual assault on a person be he/she a child or adult is a trauma of the most serious kind, and no distinction can be made in sentence be it a penis, a finger or an object.
- [10] At the present time the citizens of Fiji are disturbed if not angry about the prevalence of sexual assaults, and in particular the assaults and rapes of the nation's children and calls have been made for harsher penalties.
- [11] This Court must sentence within the parameters set down by the higher Courts and it is for Parliament or those higher courts to address the question of harsher penalties.
- [12] In adopting the tariff set by the Supreme Court (**Anand Abhay Raj** *supra*) I take a starting point of 12 years imprisonment. There are several aggravation features to the crime being the breach of trust by a guardian of a sister's child together with the age difference and consequent overbearing authority of a mature relative on a teenage girl. In addition the assault was on a child who was ill, an assault that her victim impact statement attests to have been profoundly traumatic.
- [13] For those aggravating features I add 6 years to the sentence bringing it to an interim total of 18 years.
- [14] The accused has a clear record for which credit must be given. I deduct 2 years from the sentence to reflect that.

- [15] He has served 4 months in custody prior to being released on bail. In addition he has "difficult" family circumstances which although not being strictly mitigatory, will afford him a 12 months reduction to reflect those and the previous remand period.
- [16] The sentence that the accused will serve for this rape is one of 15 years imprisonment. He will serve a total term of 10 years before being eligible for parole.
- [17] Neither the Magistrate nor any Judge dealing with the matter since had made a Domestic Violence Restraining Order as is required by law. I now do so order that the complainant be protected from any further molestation by the accused as perpetrator. Such order is to remain in place until further order.
- [18] 30 days to appeal to the Court of Appeal.



P.K. Madigan
Judge



At Labasa

14 April 2016