

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 14 of 2017

STATE

v

KISO CAMA

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

Dates of Hearing : 17, 18 May 2017

Date of Sentence : 25 May 2017

SENTENCE

1. On the 17th May 2017 in this Court the accused entered a plea of guilty to two counts of rape of his stepdaughter; the first count being a representative count of oral rape in 2015 when she was 13 years old and the second count being a representative count of carnal knowledge of the same girl in 2016 when she was 14.

2. Consequent to those pleas and to agreement to relevant facts he was convicted of those two counts and he now comes before the Court to be sentenced.
3. The facts proffered by the prosecution and agreed to by the accused are as follows:
4. In early 2015 the victim Lucy (not her real name) moved into the accused's home, Lucy's mother having entered into a relationship with him. On many occasions in the course of that year, at times when the mother was away from the home the accused would force Lucy to perform indecent acts on him, forcing her head onto him. She would complain and say that it hurt her mouth but he would insist.
5. On two different dates in October 2016 the accused raped Lucy, once in his room in the house and once on the plantation. On Christmas Eve of that year the accused found Lucy alone at home doing cleaning chores. He told her to undress whereupon he raped her on the kitchen floor.
6. During Police investigations the accused admitted the offences, saying that "bad intentions" were the reason. He told the Police that he knew it was wrong, but he always forced her.

Mitigation

7. The accused is aged 38, is married with a 10 year old daughter. He lives in a de facto relationship with Lucy's mother in Qamea, Taveuni. He works as a subsistence farmer to support his family. He also supports his elderly mother.
8. He has a clear record with no previous criminal convictions.

The Law

9. The maximum penalty for rape is a term of life imprisonment and the tariff for rapes of children has been determined by the Supreme Court to be between 10 and 16 years. (**Anand Abhay Raj** CAV 003 of 2014).
10. This Court has often referred to the shocking statistics revealing the prevalence of rape in every part of this country; and rapes of children, especially children within the “family” are particularly egregious.
11. Sexual abuse of children by a parent or senior relative is a gross breach of trust as well as a breach of several of the child’s constitutional rights.
12. The Constitution of the Republic of Fiji 2013, provides in the Bill of Rights for the rights of children and by section 41(1) (c) “every child has the right to family care, protection and guidance:’ and by section 41(1)(d) “ every child has the right to be protected from abuse.....any form of violence and inhumane treatment”.
13. Any breach of these rights recognized not only by the Constitution but by international covenants must add strong aggravating circumstances to an already abhorrent situation.
14. For each count of rape that the accused is convicted of I take a starting point of twelve years imprisonment. To that starting point I add 6 years for the aggravating features being:
 - The gross breach of trust that a daughter can expect from her father (including a step father)

- The breach of the child's constitutional rights to safety and freedom from violence

bringing the interim total to one of 18 years.

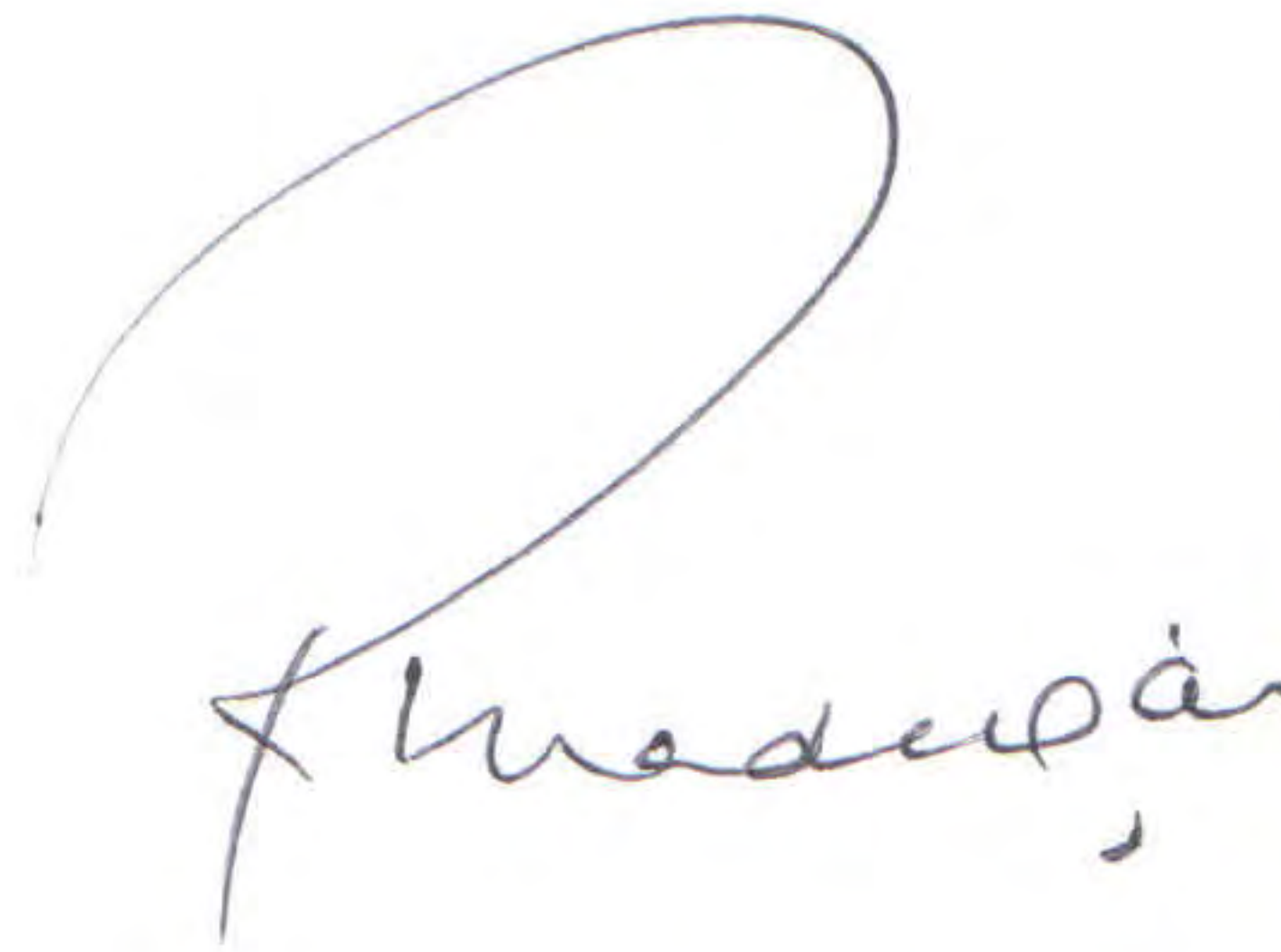
15. The accused's family circumstances afford him no value in mitigation, but his clear record and co-operation with the authorities and this court will allow him credit.
16. He has spent 4 months in custody awaiting trial and for that together with his clear record the sentence is reduced by 2 years.
17. His plea of guilty in this Court is also to his credit saving Court time but more importantly avoiding the need for the child to relive her traumatic ordeals in evidence. For that the sentence is reduced by 3 years making a final sentence of 13 years. That is the sentence that this Court passes on the convict for each of the two rapes, each to be served concurrently with each other.
18. The counts being "representative", the Court can only take into account one rape for each count.
19. It is ordered that the accused serve ten years of his sentence before he be eligible to apply for parole.
20. A domestic violence restraining order is already in place (Taveuni Magistrates Court, 27 February 2017) and will remain in force until further order.

Summary

21. First count. Imprisonment for 13 years.

Second count. Imprisonment for 13 years to be served concurrently with Count 1.

22. A minimum term of 10 years to be served before being eligible to apply for parole.



P. K. Madigan
Judge



At Labasa

25 May 2017