

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 81 of 2018

STATE

V

KASIANO NACANIELI ASOA

Counsel : Mrs. A. Vavadakua for the State
Mr. J. Korotini (L.A.C.) for the Accused.

Date of Trial : 25 March 2019
Date of Summing Up : 25 March 2019
Date of Sentence : 26 March 2019

SENTENCE

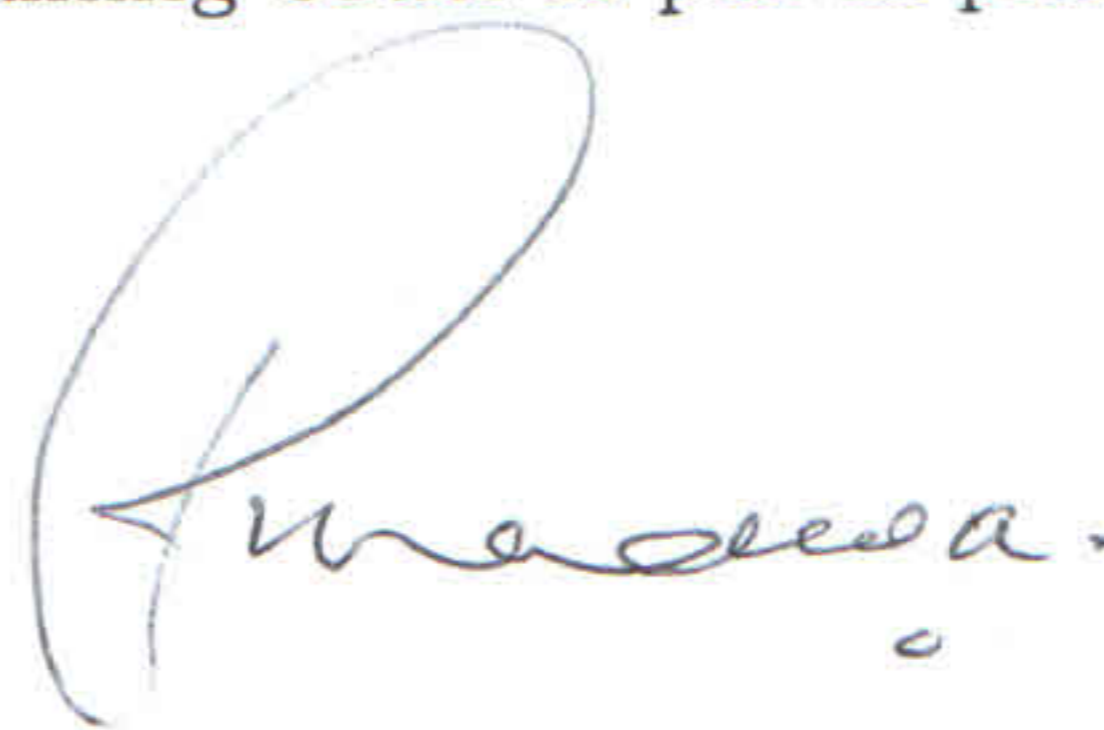
1. After trial in this Court the accused was found guilty and convicted of one count of digital rape of his 5 year old daughter.
2. The accused and the mother of the little girl were separated and the daughter was being cared for by her maternal grandmother.
3. The accused lived in a dwelling very near the dwelling of the grandmother.
4. On a night in late October 2018, the girl went to stay the night with her father and they slept on a mattress together.

5. The girl told the court that he had caused pain to her genitals. When asked how, she demonstrated with her forefinger and said "he poked."
6. The next day back at her grandmother's house she was crying and complaining of pain and her grandmother investigating saw damage and blood. On questioning the girl told her grandmother that her father had done it with his hand and she again used the word "poked".
7. The matter was reported to the Police and a medical examination was conducted at the local hospital. The medical officer found and reported a broken hymen and inflamed labia which she said were consistent with recent blunt trauma force.
8. The convicted accused is 38 years old, separated and living alone. There were three young children of the broken marriage. He survives on the \$200 per week that he earns as a yaqona farmer. He has one previous conviction in 2009 for defilement.
9. The maximum sentence for rape is life imprisonment and the Supreme Court has determined that rapes of children should attract sentences of between 11 and 20 years. (**Aitcheson** CAV0012 of 2018).
10. Sadly these sentences do not seem to have deterred would be rapists who are coming before our Courts in steadily increasing numbers.
11. This accused has very little material available to assist him in mitigation. He does not even have a clear record. He has been in custody for 4.5 months since the abuse occurred.

12. The potential psychiatric damage to the little girl is immeasurable and it is almost impossible to understand why a father would harm his young daughter in such a way just for a moment of lust.
13. I take a starting point for the sentence at 17 years' imprisonment. That high starting point subsumes the aggravation of gross breach of trust. 6 months is deducted for the time he has already spent in custody awaiting trial, and the final sentence he will serve therefore is a term of sixteen years and 6 months imprisonment. He will serve a minimum term of 14 years before he is eligible for parole.
14. In addition I order that a Domestic Violence Restraining Order be made with the accused as perpetrator and the girl as the protected person. Such order to remain place until further order of this Court.

Orders:

1. The accused is sentenced to 16 years, 6 months imprisonment.
2. He is to serve 14 years before being eligible for parole.
3. A Domestic Violence Restraining Order is put in place to protect the 5 year old victim.



P. K. Madigan

Judge

At Labasa

26 March 2019

