

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 135 OF 2011S**

**STATE**

**VS**

**VILIAME NAICORI**

**Counsels : Ms. S. Naidu and Mr. R. Kumar for State**  
**Mr. S. Waqainabete for Accused**

**Hearings : 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> October, 2013**

**Summing Up : 11<sup>th</sup> October, 2013**

**Judgment : 11<sup>th</sup> October, 2013**

**Sentence : 8<sup>th</sup> November, 2013**

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**SENTENCE**

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1. In a judgment delivered on 11<sup>th</sup> October 2013, the court found you guilty of raping the complainant on 5<sup>th</sup> May 2011, at Lami in the Central Division, contrary to section 207 (1) and 207 (2) (a) of the Crimes Decree 2009. The court then convicted you accordingly.
2. The brief facts were as follows. On 5<sup>th</sup> May 2011, you were working as the caretaker for the gun site at Veisari Lami. The 13 years 9 months complainant and her aunty came to wash your grandfather's clothes, at his nearby residence, at the time. You were 21 years old at the time. You somehow met the complainant, and offered to show her around your work place. In a dark spot in

a nearby cave, you sprang on her, and forcefully had sexual intercourse with her, without her consent. You knew, at the time, that she was not consenting to sex with you. The matter was later reported to police. An investigation was carried out. After a 3 days trial, you were found guilty as charged, for rape.

3. "Rape", as an offence, is considered one of the more serious offence, in the criminal calendar. Consequently, law makers had prescribed a maximum penalty of life imprisonment (section 207 (1) of the Crimes Decree 2009). Previous case laws had set the tariff a sentence between 7 to 16 years imprisonment. The actual sentence will depend on the aggravating and mitigating factors.
4. In this case, the aggravating factors, were as follows:
  - (i) Breach of Trust. The complainant came with her aunty to wash your grandfather's clothes. She was 13 years 9 months old and you were 21 years old. You were distantly related. You offered to show her around your work place. You took her around the gun site. In fact, you were laying a trap for her, by taking her to a dark cave, and raped her therein. This was a serious breach of trust. You abused the trust she had in you.
  - (ii) By committing the offence, you showed utter disregard to her right to be treated as a human being, and her right to her personal dignity.
  - (iii) You had no regard to her right not to be abused.
5. The mitigation factors, were as follows:
  - (i) At the age of 23 years, this is your first offence;
  - (ii) You are married with one daughter, and you are the sole bread winner;
  - (iii) You were remanded in custody from 19<sup>th</sup> May 2011 to 3<sup>rd</sup> June 2011, and from 11<sup>th</sup> October 2013 to 7<sup>th</sup> November 2013, a period of approximately 7 weeks.
6. I start with a sentence of 7 years imprisonment. I add 3 years for the aggravating factors, making a total of 10 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 7 years imprisonment.

7. For raping the complainant on 5<sup>th</sup> May 2011, I sentence you, Viliame Naicori, to 7 years imprisonment, with a non-parole period of 5 years imprisonment, effective forthwith.
8. The name of the female complainant is permanently suppressed to protect her privacy.

**Salesi Temo**  
**JUDGE**

<b>Solicitor for State</b>	<b>:</b>	<b>Office of the Director of Public Prosecutions, Suva.</b>
<b>Solicitor for Accused</b>	<b>:</b>	<b>Legal Aid Commission, Suva.</b>