

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 52 of 2012**

**BETWEEN:**

**THE STATE**

**AND:**

**PENAIA VALEVESI**

**Counsel:** Mr M. Maitava for State  
Ms M. Tarai for Accused

**Date of Hearing:** 7-10 July 2014

**Date of Sentence:** 10 July 2014

**SENTENCE**

- [1] Penaia Valevesi, you stand convicted of one count of digital rape of a 5-year old girl after trial. This is your sentence.
  
- [2] The facts are that on 20 August 2012, you were visiting a village in Nasau, Bua to buy copra from the villagers. While in the village you decided to take a rest in one of the villager's house. While you were in the house, you saw the complainant going pass the house. The complainant's mother is distantly related to you. The complainant was only 5 years old when you sexually violated her. You invited the complainant inside the house and after undressing her, rubbed her vagina with your fingers. The complainant did not tell anyone about the incident until she was prodded by her mother. Upon medical examination, the doctor found mild bruising along the introitus of the

complainant's vagina and her hymen was partially perforated. The noted injuries were consistent with vaginal penetration.

- [3] The complainant's vulnerability arising from her tender age is the only aggravating factor in this case. Otherwise, I find no other aggravating factors. You did not use any threats or violence when you committed the offence. Nor did you use any threat to prevent the complainant from complaining. The sexual act was not repeated. This was a crime of opportunity when you saw the complainant alone and unsupervised in the village. There is no planning involved.
- [4] The complainant's mother told this Court that the complainant is now afraid to go alone in the village.
- [5] The mitigating factors are your young age and previous good character. You are 21 years old and single. At the time you committed the crime you were 19 years old. You are a farmer by profession. You have eight other siblings.
- [6] Despite your young age and previous good character, a custodial sentence is inevitable to mark society's disapproval of sexual offences against children. The primary purpose of your sentence is to deter you and others from committing sexual offences against children. Rehabilitation is also important but that is a secondary purpose and it can occur within prison.
- [7] In cases of rape of a child, the tariff is between 10 to 14 years imprisonment (*Mutch v State*, Cr. App. AAU0060/99, *Mani v State*, Cr. App. No. HAA0053/02L, *State v Saitava*, Cr. Case No. HAC10/07, *State v Marawa*, Cr. Case No. 016/03, *Drotini v State*, Cr. App. AAU001/05 and *State v Tony*, Cr. App. No. HAA 003/08).
- [8] I pick 10 years as my starting point. I increase the sentence by 2 years to reflect the aggravating factor and reduce the sentence by 2 ½ years to reflect the mitigating

factors. You were in custody on remand for nearly 4 months. I further reduce your sentence by 6 months to reflect the remand period.

- [9] For the offence of digital rape of a 5-year old girl, I sentence you to 9 years' imprisonment with a non-parole period of 6 years.



Daniel Goundar  
**JUDGE**



At Labasa  
10 July 2014

**Solicitors:**  
Office of the Director of Public Prosecutions for State  
Office of the Director of Legal Aid Commission for Accused