

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

**CRIMINAL CASE NO.: HAC 41 OF 2013**

STATE

-v-

NIZAR MUNIR SAMUT

**Counsels** : Ms. S. Kiran for the State  
The accused in Person

**Date of Sentence** : 6 August 2014  
(Name of the victim is suppressed she is referred to as SAS)

**SENTENCE**

1. The accused is before the Court for sentence, after being convicted to the following charge.

**COUNT**  
*Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (1) (b) and (3) of the Crimes Decree, 2009.

*Particulars of Offence*

**NIZAR MUNIR SAMUT**, on the 12<sup>th</sup> day of January 2013, at Lautoka in the Western Division, inserted his finger into the vagina of **SAS**, a 3 year old.

2. You pleaded not guilty to above charge. Following trial lasting three days in this Court you were found guilty on above count against you.

3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial the Court decided to concur with the verdict of guilty in respect of the charge and also found you guilty of the charge.
4. The following facts were proven in evidence during the trial. The victim in this case was 3 years old at the time of the incident. You are an uncle of the victim. You have inserted your finger into her vagina while you stay at the house of the victim to do some repairs.
5. You had no remorse for your above conduct.
6. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of Hon. Mr. Justice A.H.C.T. Gates in State v Marawa. [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
8. In Mohamed Kasim v The State (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

*"We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point."*

9. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 16 years. It was held by Court of Appeal in Raj v State [2014] FJCA 18; AAU0038.2010 (5.3.2014) Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years.
10. In State v Mario Tauvoli [2011] FJHC 216, HAC 027.2011 Hon. Mr. Justice Paul Madigan held that:

*"Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."*

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

11. In State v Anthony [2012] FJHC 1013; HAC 151.2010 Hon. Mr. Justice Priyantha Nawana held that:

*“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”*

12. Considering the above, I commence your sentence at 12 years imprisonment for the charge of Rape.

13. The aggravating factors are:

- (i) Serious breach of trust by the victim towards you,
- (ii) Victim is of very young age,
- (iii) Lack of remorse,
- (iv) You let the victim relive her experience in Court,
- (v) You took advantage of the victim’s vulnerability,
- (vi) You have traumatized the life of the victim.

14. I add four years for above aggravating factors. Now your sentence is 16 years.

15. The mitigating factors are:

- (i) At the age of 32 you are first offender.

16. I deduct 1 year for the above mitigating factor. Now the sentence is 15 years.

17. You were in remand from 26.2.2013 to 19.6.2013 for a period of 3 months and 24 days. Then again you were in remand after conviction for 11 days. Thus a period of 4 months to be deducted from your sentence. Now your sentence is 14 years 8 months.

18. Considering Section 18 (1) of the Sentencing and Penalties Decree I impose 13 years as non parole period.

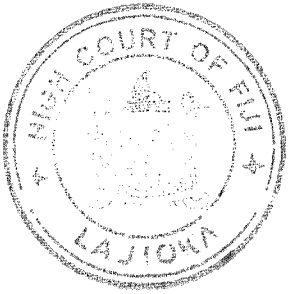
19. Your sentence are as follows:

(i) Count of Rape - 14 years 8 months

**Summary**

20. You are sentenced to 14 years 8 months imprisonment. You will not be eligible for parole until you complete serving 13 years of imprisonment.

21. 30 days to appeal to Court of Appeal.



  
Sudharshana De Silva  
**JUDGE**

At Lautoka  
06<sup>th</sup> August 2014

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