

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 099 of 2013

STATE

V

SAKIUSA TOKALAU

Counsel: Ms A. Vavadakua for the State
Ms N. Nawasaitoga for the Accused

Date of hearing: 17 November 2014
Date of Sentence: 19 November 2014

SENTENCE

1. **Sakiusa Tokalau**, you have been convicted by this Court after trial of one count of rape and three counts of sexual assault.

2. The sad facts are that in 2011 and 2012 you were living in a defacto relationship with the victim's mother and you were to all intents and purposes *in loco parentis* as the victim's father. She told the Court how strict you were laying down rules for her and her 5 siblings to follow. She thought she had to obey you at all times.
3. On the 15th February 2012, the 13 year old girl woke up to find you beside her bed touching her breasts. You pulled down her pants and lifted her top. She then felt you penetrating her vagina with something that can only have been your finger. Such an action without her consent constitutes rape.
4. The girl told us that on a previous occasion you had molested her by kissing her neck and fondling her breasts, again without her consent.
5. The higher Courts in this jurisdiction have repeatedly said that such abuse will not be tolerated and they have endorsed heavy sentences to deter others from committing such crime. Our children must be protected in their youth from predatory and deviant adults, especially those who are related and in a position of authority and trust.
6. The Court of Appeal has said in **Anand Abhay Raj** [AAU0038 of 2010] that sentences for rape of children (under 18) should be in the range of 10 to 16 years. This decision was approved of by the Supreme Court in **Anand Abhay Raj** (CAV 003 of 2014).
7. Sentences for sexual assault are to be in the range of two to eight years (as set by this Court in **Abdul Kaiyum**) with hands on bare breasts being in the mid-range of that tariff.
8. In mitigation, the Court is told that the accused is aged 41 and single with 2 children of a relationship in the village he comes

from. He is supporting those children as well as the children of the brother with whom he is living. He has a clear record which after 40 years is to his credit. He was working before arrest as a factory worker earning \$250 per week. He has made contributions to his church, to his village community fund and to relatives who are at university.

9. Although the victim told me that she was 15 at the time of the rape, her birth certificate produced by the State at the sentencing hearing shows that being born in May 1998 she was only thirteen at the time. For a stepfather to abuse his trust and status to interfere with a 13 year old step child is a crime of much repugnance.
10. For the rape I take a starting point of twelve years imprisonment. For the breach of trust I add a further period of two years. For the aggravating feature of stealth in the night waking the child, I add one more year bringing the interim total to a period of fifteen years. For his clear record I deduct one year making the sentence one of 14 years. He has spent 1 year and 4 months in remand awaiting trial and for that I deduct 18 months meaning he will serve a total term 12 years and 6 months imprisonment for the crime.
11. For each of the sexual assault counts I adopt a starting point of 5 years and add 2 years for the breach of trust. I deduct one year for his clear record and he will therefore spend 6 years in custody for each of the three sexual assault convictions. All of these will be served concurrently with each other and concurrently with the term for rape.

12. He will serve a minimum term of 10 years before being eligible for parole.

Total term: 12 years 6 months.

Minimum term: 10 years.



At Suva
19 November 2014

A handwritten signature in blue ink, appearing to read "P. Madigan".

P.K. Madigan
Judge