

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 044 OF 2014LAB

**STATE**

**VS**

**JOVESA CAGILEVU**

**Counsels : Ms. P. Low for State  
Mr. R. Tagivakatini for Accused**

**Hearings : 4 and 9 December, 2014**

**Sentence : 10 December, 2014**

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**SENTENCE**

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1. On 4 December, 2014, the accused, in the presence of his counsel, appeared on the following information:

### ***Statement of Offence***

**RAPE**: Contrary to section 207 (1) and (2) (a) & (3) of the Crimes Decree 44 of 2009.

### ***Particulars of Offence***

**JOSEVA CAGILEVU** between the 1<sup>st</sup> day of December 2013 and the 31<sup>st</sup> day of May 2014 at Bialaifai Settlement, Nagigi, Savusavu in the Northern Division, penetrated the vagina of **S. W.**, a girl under the age of 13 years, with his penis.

2. He pleaded guilty to the charge. He said, through his counsel, that no-one forced him to plead guilty, and he did the same voluntarily and out of his own free will.
3. On 9 December, 2014, the prosecution read the summary of facts in court. Briefly, they were as follows. The female complainant was born on 11 May 2006. The alleged rape was said to have occurred between 1 December 2013 and 31 May 2014. On 11 May 2014, the complainant turned 8 years old. The accused was 41 years old at the time. There was an age difference of 33 years. According to the prosecution, the female complainant is the accused's niece. Her mother is the accused's sister. In December 2013, the accused inserted his penis into the complainant's vagina. She was 7 years old, at the time. In January 2014, the accused again inserted his penis into the complainant's vagina. She was still 7 years old at the time. On 7, 8 and 10 May 2014, the accused again inserted his penis into the female complainant's vagina. She was still 7 years old at the time. On 11 May 2014, the complainant turned 8 years old. It was said that the child was mentally unwell. When caution interview by police on 14 May 2014 at Savusavu Police Station, the accused admitted the above.
4. The court then checked with defence counsel and the accused to see that he is admitting to all elements of the rape of a child. Through his counsel, the accused admitted, he inserted his penis

into the child complainant's vagina, at the material time. He said, he was aware that an under 13 year old child was incapable, as a matter of law, of giving her consent to sex with him, at the time. He said, he was also aware that he was presumed in law to know that an under 13 year old child cannot consent to sex with him, at the time. As a result of the above admission, I found the accused guilty as charged, and convicted him accordingly.

5. In **State v Eroni Tavatavanawai**, Criminal Case No. HAC 056 of 2013S, High Court, Suva, I said the following, "...Rape", as a sexual offence, had always been viewed seriously by society and the law makers of this country. It carried a maximum sentence of life imprisonment. It is a serious invasion of a person's privacy and dignity. The tariff for the rape of an adult is a sentence between 7 to 15 years imprisonment. For the rape of a child, the tariff is between 10 to 15 years imprisonment: **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, **Mark Mutch v The State**, Criminal Appeal No. AAU 0060 of 1990; **Anand Abhay Raj v The State**, Criminal Appeal No. AAU 0038 of 2010 – all Court of Appeal decisions; and **State v Savenaca Turagakece**, Criminal Case No. HAC 252 of 2012S, High Court, Suva. The final sentence will depend on the aggravating and mitigating factors..."
6. In this case, the aggravating factors, were as follows:
- (i) Breach of Trust. The female complainant's mother was the accused's younger sister. The complainant was his niece, and he was her uncle. As such, the accused was supposed to look after her, and care for her. This was even more so, because the female complainant was mentally unwell at the time. This was a serious breach of trust by an uncle to his niece.
  - (ii) Rape of a child. The female complainant was in fact 7 years old at the time of the offending. The accused was 41 years old. Obviously, the accused had ruin this child's future permanently, following his offendings towards her. The court had previously said that it will step in to protect the most vulnerable in our society, that is, the children of this country. They must not be sexually abused. Those who violate children must not complain when a severe sentence is given to them. That is designed to deter other would-be offenders.

(iii) By offending against this child, you showed utter disregard to her right as a human being and her right to personal dignity.

7. The mitigating factors were as follows:

- (i) At the age of 41 years, this is your first offence;
- (ii) Although you pleaded guilty to the offence 5 months 8 days after first call, you nevertheless saved the court's time, and the need to call the child to re-live her ordeal in the courtroom by giving evidence;
- (iii) You co-operated with police;
- (iv) You have been remanded in custody for approximately 6 months 3 weeks 4 days.

8. I start with a sentence of 14 years imprisonment. I add 4 years for the aggravating factors, making a total of 18 years imprisonment. I deduct 5 years for the mitigating factors, leaving a balance of 13 years imprisonment.

9. Jovesa Cagilevu, for raping the child complainant, I sentence you to 13 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith.

10. The name of the child complainant is permanently suppressed to protect her privacy.



**Salesi Temo**  
**JUDGE**



**Solicitor for the State** : **Office of the Director of Public Prosecution, Labasa.**  
**Solicitor for the Accused** : **Legal Aid Commission, Labasa**