

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 037 OF 2019LAB

STATE

V

SAMUELA VOSADRUGU

**Counsels : Ms. D. Rao for State
Ms. S. Devi and Ms. M. Besetimoala for Accused**

Hearings : 18, 19, 20 December, 2019

Summing Up : 21 December, 2019

Judgment : 21 December, 2019

Sentence : 23 December, 2019

SENTENCE

1. In a judgment delivered on 21 December 2019, the court found you guilty and convicted you on the following information:

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act of 2009.

Particulars of Offence

SAMUELA VOSADRUGU on 24 May 2019, at Labasa in the Northern Division, penetrated the vagina of **F.B**, a child below the age of 13 years, with his penis.

2. The brief facts were as follows. On 24 May 2019, the date of the alleged incident, the child complainant (PW2) was 4 years old. She lived with her parents in a settlement in Bua. The accused (DW1) was 23 years old. He was a close friend of the child's father and a friend of the family. He often visited the family every now and then. In the settlement, the child's family don't have access to tap water. To get water, they had to walk to a nearby church, to fetch water from the church tap.
3. On 24 May 2019, sometimes after 5pm and before 6pm, the child's father (PW3) asked the accused to fetch water from the nearby church tap. The 4 year child complainant (PW2) cried to accompany him. She was allowed to do so. When they reached the tap in the church bathroom, the accused laid the child on the bathroom floor and slightly penetrated the child's vagina with his penis. The child complained to her mother about the above 5 days after the alleged incident. She reported the matter to police.
4. An investigation was carried out. Statements were taken from the child's parents, the child and others. The child was later medically examined. On 3 June 2019, the accused appeared in the Labasa Magistrate Court charged with raping the child complainant. He had been tried and convicted in the High Court after a 3 day trial.
5. The offence of "rape" carried a maximum sentence of life imprisonment (section 207 (1) of the Crimes Act 2009). The tariff for the rape of a child is 11 to 20 years imprisonment: **Gordon Aitcheson v The State**, Criminal Petition CAV 012 of 2018, Supreme Court of Fiji. 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 child's parents, who were your friends, trusted you with their child, when you two went to the nearby church to fetch water. However, you abused

the trust by raping the child, when no-one was around. You must understand, you will have to serve a custodial sentence as a warning to others.

- (i) **Rape of a child.** The courts had been saying in the past and will say again that, those who are found guilty of raping children must not expect mercy from the courts. It is the court's duty to pass heavy sentence to warn other would-be offenders and to protect the children of this country.
- (iii) By offending against the child complainant, you had no regard for her right as a human being, her right as a child, her right to personal safety and her right to enjoy a peaceful and happy life.

7. The mitigating factors are as follows:

- (i) At the age of 23 years old, this is your first offence;
- (ii) You had been remanded in custody for approximately 2 months.

8. I start with a sentence of 11 years imprisonment. I add 3 years for the aggravating factors, making a total of 14 years imprisonment. I deduct 2 months for time already served while remanded in custody, leaving a balance of 13 years 10 months imprisonment. For being a first offender, I deduct 1 year 10 months, leaving a balance of 12 years imprisonment.

9. Mr Samuela Vosadrugu, for raping the child complainant, I sentence you to 12 years imprisonment, with a non-parole period of 10 years, effective forthwith.

10 You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Office of the Legal Aid commission, Labasa

