

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 125 OF 2011S

STATE

vs

SEREMAIA SUVENAIKA

Counsels : Mr. Y. Prasad and Ms. A. Vavadakua for State
Mr. J. Savou for Accused
Hearings : 7, 8 and 24 October, 2013 in the Nausori Magistrate Court
Judgment : 19 May, 2014 in Nausori Magistrate Court
Sentence : 9 July, 2015

SENTENCE

1. After a trial in the Nausori Magistrate Court, the accused was found guilty and convicted on the following charges:

FIRST COUNT

Representative Count

Statement of Offence

INCEST BY MALE: Contrary to Section 178 (1) and (2) of the Penal Code, Cap 17.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of January 2005 and the 31st day of December 2005, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the

Central Division, had carnal knowledge of a girl, namely **S. T**, who is to his knowledge, his daughter.

SECOND COUNT

Representative Count

Statement of Offence

INCEST BY MALE: Contrary to Section 178(1) and (2) of the Penal Code, Cap 17.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of January 2006 and the 31st day of December 2006, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the Central Division, had carnal knowledge of a girl, namely **S. T**, who is to his knowledge his daughter.

THIRD COUNT

Representative Count

Statement of Offence

INCEST BY MALE: Contrary to Section 178(1) and (2) of the Penal Code, Cap 17.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of January 2007 and the 31st day of December 2007, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the Central Division, had carnal knowledge of a girl, namely **S. T**, who is to his knowledge, his daughter.

FOURTH COUNT

Representative Count

Statement of Offence

INCEST BY MALE: Contrary to Section 178(1) and (2) of the Penal Code, Cap 17.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of January 2008 and the 31st day of December 2008, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the Central Division, had carnal knowledge of a girl, namely **S. T**, who is to his knowledge, his daughter.

FIFTH COUNT

Representative Count

Statement of Offence

INCEST BY MALE: Contrary to Section 178(1) and (2) of the Penal Code, Cap 17.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of January 2009 and the 31st day of December 2009, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the Central Division, had carnal knowledge of a girl, namely **S. T**, who is to his knowledge, his daughter.

SIXTH COUNT

Representative Count

Statement of Offence

INCEST BY MALE: Contrary to Section 178(1) and (2) of the Penal Code, Cap 17.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of January 2010 and the 31st day of January 2010, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the Central Division, had carnal knowledge of girl, namely **S. T**, who is to his knowledge, his daughter.

SEVENTH COUNT

Representative Count

Statement of Offence

INCEST BY A RELATIVE: Contrary to Section 223(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SEREMAIA SUVENAIKA between the 1st day of February 2010 and the 8th day of April 2011, at Delasese Settlement, Naqia, Wainibuka, Tailevu, in the Central Division, had carnal knowledge of **S. T**, a person Seremaia Suvenaika, knew was his daughter.

2. On 10 November 2014, the Nausori Magistrate Court was of the view that the nature of the offences and the circumstances of the case were such that greater punishment should be imposed in respect of the offences than the Magistrate had powers to impose. The Magistrate

Court then transferred the proceeding to the High Court for sentencing, presumably pursuant to Section 190 of the Criminal Procedure Decree 2009.

3. The brief facts of the case were as follows. The accused is about 56 years old, married with seven children. The female complainant is his biological daughter. In 2005, when the complainant was 12 years old, the accused had sexual intercourse with her, that is, his penis penetrated her vagina. This episode was repeated on numerous occasions in 2006, when she was 13 years old; in 2007, when she was 14 years old; in 2008, when she was 15 years old, in 2009 when she was 16 years old, and in 2010 when she was 17 years old. Her father throughout the years threatened to kill her if she raised the alarm. In 2011, the female complainant couldn't take the abuse anymore, and reported the matter to the police. Her father was later charged, tried and convicted.
4. Before I formally proceed to sentencing, I wish to make a few preliminary observations. The matter formally came before the High Court on 20 May 2011. At the time, there was only one count of "incest by male", contrary to Section 178 of the repealed Penal Code, Chapter 17. This was an offence not arising out of the Crimes Decree 2009, thus the transfer provisions in Section 4 of the Criminal Procedure Decree 2009 was inapplicable. The Magistrate Court had jurisdiction to deal with the case pursuant to section 5(1) and/or 5(2) of the Criminal Procedure Decree 2009: see **State v Josaia Murimuri**, Criminal Case No. HAC 064 of 2010, High Court, Suva. As a result of the above, on 20 May 2011, the High Court remitted the matter to the Magistrate Court, to try according to law, as it had jurisdiction to do so, pursuant to Section 5(1) and/or 5(2) of the Criminal Procedure Decree 2009. As such, it was not exercising extended jurisdiction under Section 4(2) of the Criminal Procedure Decree 2009. No extended jurisdiction pursuant to Section 4(2) of the Criminal Procedure Decree 2009 had been granted to the Magistrate Court.
5. On 24 October 2013, the prosecution amended the charges to reflect those stated in paragraph 1 hereof. Counts No. 1 to 6 were charges under the repealed Penal Code, for which the Magistrate Court had jurisdiction to deal with. Count No. 7 was an indictable offence triable only in the High Court, unless an extended jurisdiction was granted to the Magistrate Court, under Section 4(2) of the Criminal Procedure Decree 2009. Since none was given, the Magistrate Court had no jurisdiction to deal with Count No. 7, thus all the Magistrate Court's decisions on Count No. 7 are null and void: **Aca Koroi v The State**, Miscellaneous Case No.

186 of 2012S, High Court, Suva. However, its decisions on Count No. 1 to 6 are valid, as it had jurisdiction to deal with those counts. So, as far as sentencing in this case was concerned, I will only deal with Count No. 1 to 6. I now proceed to Sentencing.

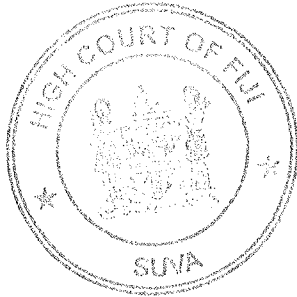
6. In **State v Anare Tubailagi**, Criminal Case No. HAC 123 of 2011S, High Court, Suva, I said the following, “...**Incest by a Relative, is always a serious offence. Pursuant to Section 223(1) of the Crimes Decree 2009, it carries a maximum penalty of 20 years imprisonment, but if the victim is aged 13 years and less, the maximum punishment is life imprisonment. The above penalties are somewhat similar to the offence of “Incest by Males”, pursuant to Section 178 of the repealed Penal Code, Chapter 17...**”
7. In **State v Anare Tubailagi** (supra), I accepted His Lordship Mr. Justice John Connor's view in **Babu Ram v The State**, Criminal Appeal No. HAA 023 of 2004L that, the tariff for “incest by a relative” should be 9 to 15 years imprisonment for “incest against adults”, and 10 to 14 years imprisonment for “incest against children”. I take the above to be the tariff in this case. The final sentence will depend on the aggravating and mitigating factors.
8. The aggravating factors in this case were as follows:
 - (i) **Breach of Parental Trust:** The relationship between a parent and a child is the most sacred of all relationship in any societal units. As a father you were supposed to protect and groom your daughter to become a confident and progressive member of society. You were supposed to support her physically and emotionally. However, you did the unthinkable by sexually abusing her when she was 12, 13, 14, 15, 16 and 17 years old. In fact, between 2005 and 2010, you repeatedly had sexual intercourse with her against her will, and you threatened to kill her, if she raised the alarm. You had breached the trust she had in you. You should not complain when your liberty is taken away to pay for your crimes.
 - (ii) **Involving your wife:** In sexually abusing the complainant, you forced your wife to assist you block the complainant's mouth while you offended against her. You then threatened both of them with death, if they raised the alarm.
 - (iii) By committing these offences, you have ruined your daughter's life. You made her pregnant, and now she had your child. You later made her pregnant again and you

made her have an abortion. You basically turned her into your wife. You had no regard whatsoever to her right as a child, and her human rights.

9. The mitigating factors were as follows:
 - (i) At the age of 56 years old, this is your first offence;
 - (ii) You had been remanded in custody from 27 April 2011 to 3 June 2011 (1 month 7 days) and from 27 August 2014 to 9 July 2015 (10 months 12 days); approximately 11 months 19 days.
10. On Count No. 1, I start with 14 years imprisonment. I add 5 years for the aggravating factors, making a total of 19 years imprisonment. I deduct 1 year for time already served while remanded in custody, leaving a balance of 18 years. For being a first offender at the age of 56 years, I deduct another 1 year, leaving a balance of 17 years imprisonment. I sentence you to 17 years imprisonment on Count No. 1.
11. I repeat the above process and sentence for Counts No. 2, 3, 4, 5 and 6.
12. The summary of your sentences are as follows:

(i)	Count No. 1	:	Incest by Male	:	17 years imprisonment
(ii)	Count No. 2	:	Incest by Male	:	17 years imprisonment
(iii)	Count No. 3	:	Incest by Male	:	17 years imprisonment
(iv)	Count No. 4	:	Incest by Male	:	17 years imprisonment
(v)	Count No. 5	:	Incest by Male	:	17 years imprisonment
(vi)	Count No. 6	:	Incest by Male	:	17 years imprisonment
(vii)	Count No. 7	:	Incest by Male	:	No jurisdiction to try. Re-trial at the discretion of the Director of Public Prosecution.
13. Because of the totality principle of sentencing, I direct that all the above sentence be made concurrent to each other, that is, a total sentence of 17 years imprisonment.
14. Mr. Seremaia Suvenaika, for committing incest against your daughter between 2005 to 2010, I sentence you to 17 years imprisonment, with a non-parole period of 16 years imprisonment, effective forthwith.

15. The name of the complainant is permanently suppressed, to protect her privacy.



A handwritten signature in black ink, appearing to be "Salesi Temo". The signature is fluid and cursive, starting with a large loop on the left and ending with a long, sweeping tail that curves back towards the right.

Salesi Temo
JUDGE

Solicitor for the State
Solicitor for Accused

:
:

Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.