

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

**CRIMINAL CASE NO.: HAC 274 OF 2013**

**BETWEEN:**                      **THE STATE**

**A N D:**                              **ROPATE ROKOTAI NAINOVO**

**Counsel**                      :      Ms. Naidu S for the State  
   :      Accused In Person

**Date of Sentencing :**      19<sup>th</sup> November 2013

---

**SENTENCE**

---

1.      It is hereby ordered to permanently suppress the name and the identity of the victim.
2.      Ropate Rokotai Nainovo, you stand convicted for two counts of 'Rape' contrary to Section 207 (1) and (2)(a) and (3) of the Crimes Decree No. 44 of 2009. You pleaded guilty to the said two charges on 14<sup>th</sup> day of October 2013 and admitted the Summary of facts to be correct. The two charges are as follows.

**First Count**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009

*Particulars of Offence*

**ROPATE ROKOTAI NAINOVA**, on the 12<sup>th</sup> day of July 2013, at Suva in the Central Division, had carnal knowledge of K.M.K.K, a girl under the age of thirteen.

**Second Count**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009

*Particulars of Offence*

**ROPATE ROKOTAI NAINOVA**, on the 15<sup>th</sup> day of July 2013, at Suva in the Central Division, had carnal knowledge of K.M.K.K, a girl under the age of thirteen.

3. The admitted summary of facts says that the victim was just 11 years of age at the time of the commission of the offences. You lived right next door to the victim's. On 12<sup>th</sup> of July 2013 you had called the victim to your room and had sexual intercourse with her when she came to play with your nephew. She had not told about this incident to anybody as she was frightened.
4. On 15<sup>th</sup> of July 2013, you had sexual intercourse for the 2<sup>nd</sup> time with her when the victim came to your house asking for a box of matches. The victim had noticed blood in her underwear, after this forceful and painful sexual intercourse and told her mother about what you did to her. Then the mother of the victim had reported the matter to the police.
5. During the Cautioned Interview, you had admitted that you raped the victim on 15<sup>th</sup> of July 2013, but denied the 12<sup>th</sup> of July allegation. Nevertheless, you pleaded guilty to both the charges, based on 12<sup>th</sup> of July and 15<sup>th</sup> of July, when the charges were put to you in this court. This court is satisfied that your plea of 'guilty' was voluntary and based on your own free will. Thus, this court proceeds to sentence you to the two charges of 'rape'.
6. The maximum penalty for the offence of Rape is life imprisonment. When a child victim is involved, the tariff in our jurisdiction for the offence of rape

ranges from 10 – 15 years imprisonment. (see **Mark Mutch v The State**, *Criminal Appeal No. AAU 0060 of 1999, Fiji Court of Appeal*; **State v Lepani Saitava**, *Criminal Case No. HAC 10 of 2007, High Court, Suva*; **The State v AV**, *Criminal Case No. HAC 192 of 2008, High Court, Suva*; **State v VV**, *Criminal Case No. 084 of 2009, High Court, Suva* and **State v Waqabaca**, *Criminal Case No. HAC 139 of 2008, High Court, Suva*, **State v NK**, *Criminal Case No. HAC 155 of 2010*, **State v Nacanieli Yavala**, *Criminal Case No. HAC 129 of 2012* and **State v Simione Taleusila**, *Criminal Case No. HAC 11 of 2010*).

7. In view of the above legal precedents, I take a starting point of 12 years imprisonment for each count of 'Rape'.
8. When focusing on the aggravating factors, this court first identifies the fact of 'breach of trust'. You are an uncle of the victim from her mother's side. You were living as the next door neighbour to the victim's house. Therefore, it is undoubted that the victim can trust you as an elderly relative. You have abused that trust to gain a physical satisfaction. You were 24 years of age at the time of the commission of the offences, whilst the victim was just 11 years. You were quite matured enough to understand the 'trust' that you are exercising as the 'uncle' of the victim and the egregiousness of your conduct.
9. This court is much concerned about the bleeding caused to the victim during the 2<sup>nd</sup> sexual intercourse on 15<sup>th</sup> of July 2013. Being a girl of 11 years it would have been really painful to the victim. The Medical Examination Report of the victim reflects abrasions on the vaginal orifice and the labia. This is undoubtedly an aggravating feature. On the other hand, the Victim Impact Statement shows that the victim is scared and frightened in her day to day activities, after she faced these incidents. Now she is not eager to go to school as she used to do earlier and her school results also have dropped. Her teachers are complaining that she is not concentrating on school work as before. These are the direct repercussions of your conduct and thus aggravate the offending back ground.
10. For the aggravating factors discussed in paragraph 8 and 9, this court adds 4 years to the starting point of each count.

11. In mitigation, you tender an apology to the victim and her mother. You say that you are remorseful for your acts. You stress that you did not do anything forcefully and in fact, the victim consented for what you did. You plead for a lenient sentence enabling you to have a good future with a wife and a kid. You are not a 1<sup>st</sup> offender. There is one previous conviction against your name for committing 'Indecent Assault' in July 2012. You admitted the victim in the previous conviction and this case is same. Thus, you will not receive any concession for your previous good character. For the other mitigating factors stated above, I reduce 1 year imprisonment from the interim sentence of each count. Now it stands 15 years imprisonment.
12. You indicated your willingness to plead guilty to the charges from the very first day you appeared before this court. Your approach undoubtedly protected the victim from recalling her bitter experiences had with you and to save the time and resources of court to allocate to some other matter. This back ground warrants due recognition and this court offers you a reduction of a third of your interim sentence. Then your final sentence stands as 10 years imprisonment for each count.
13. Both sentences of 10 years imprisonment are ordered to run concurrently.
14. Having considered your young age and willingness to be a 'productive man' to the society, I order that you be eligible for parole after 7 years of your sentence.
15. Finally, I order 4 months to be reduced from your final sentence of 10 years in terms of section 24 of the Sentencing and Penalties Decree as you have been in custody since 16<sup>th</sup> of July 2013 in relation to this matter.

Janaka Bandara

**Judge**

**At Suva**

Office of the Director of Public Prosecutions for the State

Accused in Person

