

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 168 OF 2012

STATE

-v-

LUKE NACUVA

Counsels : **Mr. F. Lacanivalu for the State**

The accused in person

Date of Sentence : **21 March 2014**

(Name of the victim is suppressed she is referred to as AT)

SENTENCE

1. The accused is before the Court for sentence, after being convicted to the following charge.

Statement of Offence

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

Particulars of Offence

LUKE NACUVA on the 24th day of November 2012 at Nasivikoso Village, Navosa in the Western Division inserted his penis into the vagina of **AT**, aged 10 years old.

2. You pleaded not guilty to above charge. However, after the Voir Dire inquiry, when case was taken up for trial on 13.3.2014, you pleaded guilty to the charge and admitted the summary of facts the same day.

3. The summary of facts are as follows:

The Accused in this matter is one Luke Nacuva, 24 years old, a Farmer of Nasivikoso Village in Navosa in the Western Division.

The Victim is one AT, now 12 years old, a student of Sabeto Central Primary School currently residing at Natalau Village in Nadi.

On the 24th of November 2012 at Nasivikoso Village in Navosa, AT, then 10 years old, had breakfast in the morning before she went to her family's plantation. At the plantation, after collecting some firewood, she decided to get a sack to collect some dalo leaves. On her way back to the village to get the sack, she saw the Accused on the horseback. She knew the Accused as they are cousins. The Accused in order to lure her away, told her that her uncle Manasa was collecting coconuts ahead in another part of the bushes. This was not true. The Accused then lifted AT and placed her on the horseback. He then took her along the track but later went off track. After a while AT wanted to relieve herself so the Accused helped her off the horse.

Just as she was about to pull her panty down, the Accused grabbed her hand and pulled her panty down. AT asked him as to what he was doing. He replied that he wanted to see where or how women pass urine. AT told him that men are not allowed to see this. The Accused also started telling AT about pornographic movies but she did not want to hear it and covered her ears with her hands.

The Accused then made AT lie down, parted her legs and firstly licked her vagina before he inserted his penis into her vagina. AT wanted to yell for help but the Accused placed his hands on her mouth to stop her. AT also felt that it was painful when he inserted his penis into her vagina.

After a while, a man namely Uraia passed by who had gone to search for them. The Accused in seeing this got up back on the horseback and fled. AT got up and ran to the village before she relayed the incident to her family including Manasa Naliesa in the afternoon.

The matter was reported to the Navosa Police Station by the *Turaga ni Koro* of Nasivikoso Village Epeli Toutou on the 26th of November 2012. AT was medically examined by Dr.Fatiaki of Keyasi Health Centre and the following injuries were noted:

'Hymen not intact.

Slight swelling on anterior vaginal wall.

Slightly inflamed labia minora + majora.'

Dr. Fatiaki's professional opinion was that AT was 'sexually assaulted – penetrated vagina without consent.'

The Accused was arrested, caution interviewed and admitted to the allegation of rape.

4. After carefully considering your Plea to be unequivocal, this Court found you guilty for Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree.
5. Luke Nacuva you stand convicted for one count of Rape.
6. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of Hon. Mr. Justice A.H.C.T. Gates in **State v Marawa** [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
8. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, the Court of Appeal observed:

“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”

9. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 16 years.
10. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Hon. Mr. Justice Paul Madigan held that:

“Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

11. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Hon. Mr. Justice Priyantha Nawana held that:

“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”

12. Considering the above, I commence your sentence at 11 years imprisonment for the charge of Rape.

13. The aggravating factors are:

- (i) Serious breach of trust between cousins
- (ii) Age gap between you and the victim (10 years)
- (iii) You took advantage of the victim’s vulnerability
- (iv) Total disregard to the victim’s safety and wellbeing.

I add 3 years for above aggravating factors. Now your sentence is 14 years.

14. The mitigating factors are:

- (i) You are first offender
- (ii) You have shown remorse
- (iii) You were punished by victim’s family members by whipping.

I deduct 2 years for the above mitigating factors. Now the sentence is 12 years.

15. Although you pleaded guilty late in this case, even on the first day before the learned Magistrate you have pleaded guilty. Further, you prevented the victim to re-live the

trauma by giving evidence. Thus you are entitled for 4 years deduction for your guilty plea. Then your sentence is 8 years.

16. You were in remand since the date of arrest 26.9.2012 for a period of 1 year 4 months and 22 days. I deduct that period from your sentence acting under Section 24 of the Sentencing and Penalties Decree. Now your sentence is 6 years 7 months and 8 days.

17. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 5 years as non parole period.

18. Your sentence is as follows:

(i) Count of Rape - 6 years 7 months and 8 days

19. Having considered the Domestic nature of the relationship you had with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying victim AT as the protected person. You are hereby ordered not to have any contact with the victim directly or by any other means, unless otherwise directed by this Court.

Summary

20. You are sentenced to 6 years 7 months 8 days imprisonment. You will not be eligible for parole until you complete serving 5 years of imprisonment.

21. 30 days to appeal to Court of Appeal.

Sudharshana De Silva

JUDGE

At Lautoka

21st March 2014

**Solicitors: Office of the Director of Public Prosecutions for prosecution
Accused in Person**