

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 435 OF 2012**

**STATE**

**VS**

**MOSESE NATUWAWA SAUKITAKALI**

**Counsel** : **Mr M. Vosawale & Mr S. Seruvatu** for the **State**  
: **Mr N. Bulisea** of **Vakaloloma & Associates** for the **Accused**

**Summing Up** : **29<sup>th</sup> September 2016**

**Judgment** : **30<sup>th</sup> September 2016**

**Sentence** : **30<sup>th</sup> September 2016**

*(Name of the complainant is permanently suppressed and will be referred to as A.B.)*

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## **SENTENCE**

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[1] **MOSESE NATUWAWA SAUKITAKALI**, after being convicted on three representative counts of Indecent Assault, contrary to Section 154 (1), Rape, contrary to Sections 149 and 150 of the Penal Code and also for Indecent Assault, contrary to Section 212(1) of the Crimes Decree No. 44 of 2009, you are now brought before this Court for imposition of your sentence.

[2] You pleaded not guilty to the above charges. The ensuing trial lasted for three days in this Court; during which, the complainant and her mother have given evidence for the prosecution while you offered evidence in support of your denial.

[3] At the conclusion of trial; having reviewed the evidence and it's summing up to assessors, this Court decided to accept their unanimous opinion and found you guilty and convicted you to the two counts of Indecent Assault and also to the count of Rape.

[4] The following facts were proved during the trial:

(i) *The complainant was born on 1<sup>st</sup> August 1995. You are the de facto partner of her mother and since 2004; they lived with you in your house. During 2004, whilst asleep the complainant felt you touching her body and her breast. You then threatened her not to tell this to her mother, who slept next to you.*

(ii) *In relation to the count of Rape, the complainant said in 2006, she returned home from school hoping to attend a party. After she had a shower, she returned to the bedroom to dress up. Then you put her on the bed and inserted your fingers into her vagina. Then you inserted your penis into her vagina. She was in pain and was crying. She hated you for what you did to her. Thereafter, she washed herself up as she felt blood in her vagina. She was threatened by you with a cane knife, not to reveal this.*

(iii) *In 2012, one evening when the complainant was sleeping; you, having laid yourself on top of her, touched her body and breast. She ran to her mother, who was at a neighbour's house at that time, and informed her of what happened.*

[5] In your evidence you said you only got to know about the allegation of Rape and pregnancy in 2012 when the Police arrested you. You denied all three charges.

[6] According to Section 150 of the Penal Code and Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. It is a serious offence.

[7] The complainant was 9 years of age at the time of the Rape and therefore, is a juvenile. The tariff for Rape of a juvenile is confirmed in the Judgment of Chief Justice Gates in **Raj v State** [2014] FJSC 12. The starting point of imprisonment for Rape of a juvenile is 10 years. The tariff is between 10 years to 16 years.

[8] In **Mohammed Kasim v The State** (unreported) Cr. Case No. 14 of 1993; of 27 May 1994, the Court of Appeal observed thus:

*"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."*

[9] In determining the starting point within the said tariff, Goundar J, in **Koroivuki v State** [2013] FJCA 15 has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".*

[10] The offence of Indecent Assault under Penal Code and Crimes Decree 2009 carries a maximum sentence of 5 years imprisonment. Tariff for the offence of indecent assault is 12 months of imprisonment to 4 years as per **Rokota v. State** [2002] FJHC 168.

[11] Considering the nature of your offending, and in the light of the above guiding principles, I commence your sentence at 12 years of imprisonment for the count of Rape.

[12] The aggravating factors are:

- (i) Breach of trust the victim had towards you as her step father;
- (ii) Taking advantage of the victim's vulnerability;
- (iii) Display of total disregard to the victim's wellbeing;
- (iv) The significant age gap between you and the complainant;
- (v) Psychological impact on the complainant.

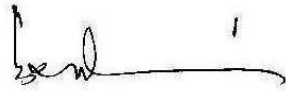
- [13] I add 3 years on your sentence for the above aggravating factors. Now your sentence is 15 years.
- [14] The mitigating factor of “*good general character*” as submitted by you, could not be considered as your antecedent report contains a conviction entered in December 2008. Other personal circumstances relied upon by you also could not be considered as mitigating factors in view of the judgment of ***Raj v State*** (supra).
- [15] You were in remand for this case, according to prosecution, for a period of 7 months and 8 days. You are unable to provide specific time period of your remand period. It is also said that you were also in remand for assault of the complainant for a period 5 to 6 months, upon the report made by the complainant, which also included the accusation of Rape. In considering these circumstances, I take your period of remand as a period of two years.
- [16] In relation to the two counts of Indecent Assault; having considered the nature of offending and aggravating factors and also in view of category 3 of ***State v Laca*** [2012] FJHC 1414, I impose further 3 years of imprisonment on each of those counts.
- [17] I further order that these three terms of imprisonments to run concurrently considering its effect on you, acting under totality principle.
- [18] In view of the provisions contained in Section 24 of the Sentencing and Penalties Decree 2009, I deduct your two year long remand period from your sentence and now the sentence to serve is 13 years.
- [19] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 10 years of non-parole period in view of the judgement of Court of Appeal in ***Paula Tora v The State*** [2015] FJCA 20 and was endorsed by the Supreme Court in ***Paula Tora v The State*** [2015] FJSC 23.

### Summary

[20] Your final sentence is therefore as follows:

- (i) *For the count of Rape – 13 years of imprisonment.*
- (ii) *For each count of Indecent Assault - 3 years of imprisonment.*
- (iii) *These three terms of imprisonment are to run concurrently.*
- (iv) *Non-parole period - 10 years.*

[21] You have 30 days to appeal to the Court of Appeal.



**ACHALA WENGAPPULI**  
**JUDGE**



**At Suva**

**This 30<sup>th</sup> Day of September 2016**

***Solicitor for the State*** : ***Office of the Director of Public Prosecution, Suva***  
***Solicitor for the Accused*** : ***Vakaloloma & Associates***