IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 77 of 2024

STATE

V

NEREO DAVID ROKOSUGU

Counsel	:	Ms. R. Uce for the State.
		Ms. N. Sharma for the Accused.
Date of Submissions	:	13 June, 2025
Date of Sentence	:	23 June, 2025

SENTENCE

(The name of the victim is suppressed she will be referred to as "A.P").

1. The accused is charged with the following offence as per the information filed by the Director of Public Prosecutions dated 27th February, 2025:

Statement of Offence

RAPE: contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

NEREO DAVID ROKOSUGU on the 1st day of May, 2024, at Nadi in the Western Division, penetrated the anus of "A.P" with his penis, without her consent.

2. This file was first called in the High Court on 17th May, 2024 and after several adjournments due to the delayed filing and service of the information and disclosures the accused on 26th March, 2025 pleaded guilty to one count of rape in the presence of his counsel.

3. On 14th May, 2025 the summary of facts was read and explained to the accused in the ITaukei language who understood and admitted the same in the presence of his counsel.

4. After considering the summary of facts read by the state counsel this court was satisfied that the accused had entered an unequivocal plea of guilty on his freewill. This court was also satisfied that the accused had fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted by the accused satisfied all the elements of the offence of rape as charged.

5. In view of the above, this court on 14th May found the accused guilty and he was convicted as charged.

6. The brief summary of facts was as follows:

   a) On 1st May 2024, at about 6 am, the 16 year old victim boarded an early morning bus with her father and three older siblings. She disembarked at the Waimalika junction and was walking to school when she noticed the accused following her.

b) The accused removed his t-shirt and from behind covered the victim's mouth. At the same time, the accused pushed the victim to a nearby sugarcane farm, forcefully removed her pants and panty and inserted his erected penis into her anus.

c) The victim was in a state of shock and she tried to push the accused away, but he held her tightly. The accused only stopped when a truck drove by, at which point he quickly stood up, pulled up his pants, and ran away.

d) The victim put on her pants and panty and walked a few meters to her friend Tulia's house, where she relayed the incident to Tulia's mother, Vasemaca Sulua. According to Vasemaca, when the victim arrived, she looked weak and in shock. She also noticed blood stain on the victim's dress.

e) Vasemaca took the victim to the school and informed the Vice Principal of the incident. The matter was reported to the police, and an investigation was conducted.

f) The victim was medically examined at Medical Services Pacific. The doctor noted a laceration at the fossa navicularis, approximately 1.5cm long, extending from posterior fouchette. The labia minora on both sides appeared red, with anal abrasion.

g) The victim attended an identification parade and positively identified the accused as the person who had raped her earlier that morning. She confirmed that the accused was wearing the same clothes when she saw him that morning.

h) The accused was arrested and caution interviewed during which he admitted to the allegation.

7. The state counsel filed sentencing submissions along with the victim impact statement, and the defence counsel filed mitigation submissions, for which this court is grateful.

8. The accused counsel presented the following mitigation:

a) The accused is a first offender;

b) He was 18 ½ years old at the time of the offending;

c) Was employed as an Assistant Tradesman;

d) Was earning $350.00 weekly;

e) Pleaded guilty at the earliest opportunity;

f) Seeks forgiveness from the complainant and the court;

g) Apologizes to the court for his actions;

h) Regrets what he has done;

i) Remorseful of his actions, seeks leniency;

j) Promises not to reoffend;

k) Cooperated with the police.

9. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj –vs.- The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

AGGRAVATING FACTORS

10. The aggravating factors are:

(a) Victim was vulnerable

The victim was vulnerable and helpless. The accused took advantage of the situation since the victim was alone.

(b) Accused was bold and undeterred

The accused was bold and undeterred in what he did to the victim that early morning on a public road and he did not have any regard for the safety of the victim.

(c) Prevalence of offending

There has been a notable increase in sexual offence cases by such opportunistic individuals.

(d) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

a) Having flashback of what the accused has done;
b) Could not finish her education.

TARIFF

11. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in *Gordon Aitcheson vs. The State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has

confirmed the new tariff for the rape of a juvenile to be a sentence between 11 years to 20 years imprisonment.

GUILTY PLEA

12. The accused pleaded guilty at the earliest opportunity. In *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (2 November, 2018)* the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

> *[14]. In **Rainima -v- The State** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:*
>
> *"Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance."*
>
> *In **Mataunitoga –v- The State** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:*
>
> *"In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The*

timing of the plea, of course, will play an important role when making that assessment."

[15]. The principle in ***Rainima*** *must be considered with more flexibility as* ***Mataunitoga*** *indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.*

13. This court acknowledges that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused. However, the guilty plea must be entered in the true spirit of remorse, as genuine remorse can lessen the severity of the final sentence *(see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016).*

14. Genuine remorse involves genuinely feeling sorry for one's actions. Accepting guilt due to strong evidence and proof of the offender's deeds, does not, in itself, constitute genuine remorse (see *Gordon Aitcheson vs. The State, supra).* In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors, such as the timing of the plea, the strength of the prosecution case etc. There is no doubt that the guilty plea was entered at the first available opportunity.

15. The Supreme Court in *Mohammed Alfaaz v State [2018] FJSC 17; CAV0009.2018 (30 August 2018)* has stated the above in the following words at paragraph 54 that:

"It is useful to refer to the observation expressed by the Fiji Court of Appeal in Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that "No society can afford to tolerate an innermost feeling among the people that offenders of sexual offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity."

16. Madigan J in *State v Mario Tauvoli HAC 027 of 2011 (18 April, 2011)* said:

"Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and 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."

17. The Supreme Court in *Felix Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015)* mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

(a) whether the crime had been planned, or whether it was incidental or opportunistic;
(b) whether there had been a breach of trust;
(c) whether committed alone;
(d) whether alcohol or drugs had been used to condition the victim;
(e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;
(f) whether the impact on the victim had been severe, traumatic, or continuing;

(g) *whether actual violence had been inflicted;*

(h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*

(i) *whether the method of penetration was dangerous or especially abhorrent;*

(j) *whether there had been a forced entry to a residence where the victim was present;*

(k) *whether the incident was sustained over a long period such as several hours;*

(l) *whether the incident had been especially degrading or humiliating;*

(m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*

(n) *Time spent in custody on remand.*

(o) *Extent of remorse and an evaluation of its genuineness;*

(p) *If other counts or if serving another sentence, totality of appropriate sentence.*

18. After assessing the objective seriousness of the offence committed I take 11 years imprisonment (lower range of the scale) as the starting point of the sentence. I increase the sentence for aggravating factors by 4 years. The accused receives a reduction for mitigation and good character (although the personal circumstances and family background have little mitigatory value) by 1 year. The interim sentence is now 14 years imprisonment.

19. This court accepts that the accused has shown some remorse by pleading guilty in the face of a strong prosecution case. However, he has not only saved the court's time but also spared the victim from reliving her traumatic experience in court. In this respect, the sentence is further

reduced by 1 year for guilty plea. The sentence is now 13 years imprisonment.

20. Furthermore, the accused has been in remand for 4 months and 8 days. In exercise of my discretion, I reduce the sentence by 4 months and 15 days in accordance with section 24 of the Sentencing and Penalties Act, as a period of imprisonment already served. The final sentence is 12 years, 7 months and 15 days imprisonment.

21. Mr. Rokosugu, you have committed a serious offence against a child who was on her way to school early that morning. The victim was unsuspecting and vulnerable. You should have demonstrated maturity and self-restraint. You acted on impulse and lust, without a second thought for the consequences of your actions. A deterrent sentence is the only appropriate response.

22. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

23. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.

24. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State AAU0063.2011 (27 February 2015)* at paragraph 2 where Calanchini P (as he was) said:

> *[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.*

25. The Supreme Court in accepting the above principle in *Akuila Navuda v The State [2023] FJSC 45; CAV0013.2022 (26 October 2023)*] stated the following:

> *Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was*

insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

26. Considering the above, and the fact that the accused was 18 ½ years old (young offender), that this was his first offence, that his actions were out of character, that he entered an early guilty plea, cooperated with the police, and has shown some remorse. I impose a non-parole period of 9 years to be served before the accused becomes eligible for parole. I consider this non-parole period appropriate for the rehabilitation of the accused and also meets the expectations of the community, which is a just outcome given circumstances of this case.

27. In summary, I impose a sentence of 12 years, 7 months and 15 days imprisonment for one count of rape, with a non-parole period of 9 years to be served before the accused is eligible for parole.

28. 30 days to appeal to the Court of Appeal.

Sunil Sharma
Judge

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LAUTOKA

At Lautoka
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Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.