

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

**Criminal Case No. HAC 120 of 2015**

**STATE**

vs.

**JAMES ANTHONY NAIDU**

**Counsels** : Ms. S. Kiran for the State  
: Mr. K. Tunidau for the Accused

**Dates of Hearing** : 12, 17, 19, 20 October, 2016  
**Closing Speeches** : 21 October, 2016  
**Date of Summing Up** : 26 October, 2016  
**Date of Judgment** : 28 October, 2016  
**Date of Sentence** : 04 November, 2016

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**SENTENCE**

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*(The name of the victim is suppressed, the victim will be referred to as "HD")*

1. In a judgment delivered on 28 October, 2016 the court found the accused guilty and convicted him for two counts of rape as per the following information:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**JAMES ANTHONY NAIDU** on the 1<sup>st</sup> of May 2015 at Lautoka in the Western Division penetrated the mouth of “**HD**” with his penis, without her consent.

**COUNT THREE**

*Statement of Offence*

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

*Particulars of Offence*

**JAMES ANTHONY NAIDU** on the 1<sup>st</sup> of May 2015 at Lautoka in the Western Division penetrated the vagina of “**HD**” with his finger, without her consent.

The brief facts were as follows:

2. On 1<sup>st</sup> May, 2015 at around 7pm the victim who was 16 years of age, a Form 5 student and a friend Sara were picked by the accused from Ram Asre Road in his car. The victim knew the accused who was a family friend. She accompanied Sara since it was her school holidays and Sara had an employment opportunity at the Motel owned by the accused.
3. The accused drove the victim, Sara and Meli an employee of the accused to a liquor shop where some liquor was bought. The accused paid for the liquor. After buying liquor all went to the seawall at Marine Drive. At the seawall all except the accused drank liquor.
4. After a while Sara and the accused went somewhere in the car of the accused, when they returned Sara informed the victim that the accused wanted to talk to her in private about her wages.
5. The accused drove the victim to a vacant land. After stopping the car the accused locked the doors pulled down his three quarter pants and told the victim to suck his penis. The victim was scared and shocked she had

nowhere to go she could not escape. The accused took the victim's head and pushed it towards his penis and forced her to suck his penis.

6. As the victim was sucking the penis of the accused, the accused pulled down the skirt of the victim and started to play around with her vagina and then inserted his finger into her vagina.
7. The victim did not consent to what the accused had done to her. After this, the accused drove the victim back to Marine Drive. At Marine Drive the accused told the victim to go to the back seat of the car and not to tell anyone about what had happened he threw \$20.00 at her.
8. Both counsels have filed helpful written submissions for which the court is grateful.
9. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
  - a) The accused is 56 years of age he is currently married to Suluia Lotita and they have two young children who are 5 years and 1 year 8 months respectively;
  - b) He also has two adult boys from his previous marriage;
  - c) He is a Businessman with interests in a Motel and Car Rental Company;
  - d) The accused is a first offender.
10. Counsel for the accused also submits that the accused is not a violent person and in this case there was no evidence of any violence used against the victim.
11. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs- The State, CAV 0003 of 2014* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.
12. The aggravating features are:
  - a) Breach of Trust  
The victim knew the accused as a family friend and trusted him hence she went with the accused that evening. The victim was keen to do

part time school holiday work at the Motel owned by the accused, he took advantage of the victim's vulnerability.

b) Education

As per the victim impact assessment filed in court the victim is not going to School after the incident since she still feels ashamed of what has happened to her.

c) Age Difference

The victim was 16 years of age whereas the accused was 55 years of age, the age difference is 39 years which is substantial.

13. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The Supreme Court of Fiji in the decision of Anand Abhay Raj (supra) has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.
14. It is a well-known fact in this Country that sexual offences involving children continue to rise. In most cases the perpetrators are people who are known to the victims. It is the duty of the court to protect young children from sexual exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.
15. There has also been an increase in sexual offences where the offenders are matured adults.
16. Mr. Naidu as a matured adult and a family friend of the victim and her family you should have been more responsible, there is no shying away from the fact that the victim and her family trusted you, think of the discomfort the victim and her family had to endure as a result of your personal lust. This court will be failing in its duty if a deterrent sentence was not imposed.
17. Section 17 of the Sentencing and Penalties Decree states:

*"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in*

*respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

18. I am satisfied that the two offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Decree I prefer to impose an aggregate sentence of imprisonment for the two offences.
19. I take 10 years imprisonment as the starting point of your aggregate sentence. I add 4 years for the aggravating factors, bringing an interim total of 14 years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value I find his good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
20. I note from the State submissions that the accused was remanded for 8 days. I exercise my discretion to reduce the sentence for the remand period by one month in accordance with section 24 of the Sentencing and Penalties Decree as a period of imprisonment already served by you. The final sentence is 11 years 11 months imprisonment.
21. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Decree the head sentence of imprisonment for the two offences of rape is 11 years 11 months imprisonment.
22. Having considered section 4 (1) of the Sentencing and Penalties Decree and the serious nature of the offences committed on a victim who was 16 years of age 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 Decree, I impose 9 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.

24. I am satisfied that the term of 11 years and 11 months imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.
25. In summary I pass an aggregate sentence of 11 years and 11 months imprisonment with a non-parole period of 9 years to be served before the accused is eligible for parole.
26. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Sunil Sharma".

**Sunil Sharma**  
**Judge**

**At Lautoka**

4 November, 2016

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Kevueli Tunidau Lawyers for the Accused.**