



2. The facts of the case were that on the 22<sup>nd</sup> January 2013, victim visited her aunt in the Nacara Settlement in Ra and stayed there. When aunt left home, aunt's son, the 3<sup>rd</sup> accused, invited her to join a grog session that was in progress in the evening with the participation of other four accused. She accepted the invitation of her cousin and joined the grog session. The victim was drinking till late night and went to lie down in the upper part of the house. Whilst she was lying down, 1<sup>st</sup> accused came to her and sat on her legs. Then he held on to her and tied her hands and legs. He called the other accused, 1<sup>st</sup> accused undressed her and penetrated her vagina first. Then all the accused followed the suite and penetrated her, taking turns. 1<sup>st</sup> accused admitted the sexual intercourse in Court. At the caution interview, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused also confessed to police.
  
3. The tariff for rape in Fiji is well settled. When the victim is an adult as in this case, a minimum sentence of 7 years' imprisonment should be imposed. In Mohamed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May 1994, Fiji 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."*

4. The victim faced a gang rape attack. Justice Madigan in State v Nairogorogo [2015] FJHC 687; HAC14.2013 (25 September 2015) has set out the tariff for gang rape between 9-15 years imprisonment and said:

*"The assault on this woman was a nasty violent group attack and as such must attract penalties over and above the usual penalty for rape. An enhanced starting point will be taken for the fact that it was a group or "gang" rape.*

*Whilst the normal range of sentences for rape is 7 to 15 years (Kasim), the range for a gang rape, where all perpetrators are acting in agreement, should be increased by making the lower starting point of the range to be a term of nine years. Any additional aggravating factors particular to the case being sentenced will of course be added to that point”.*

5. Rape is a serious offence committed against humanity and a violation of sexual autonomy of a person. This offence must be deterred and condemned as a social menace. Much has been said recently by the Courts as to the gravity of rape as a crime.
6. These young men all in their 20s embarked on a grog session leading to this heinous assault on a vulnerable young girl.
7. The victim was an 18 year old at the time of the offence. Her enjoyment of life that has been shattered. Scar will be with her for the rest of her life. It has been repeatedly said by psychologists that the effect of sexual assault on victims is profound and prolonged.
8. Having considered the gravity of the offending, the gang rape situation, and the impact of the victim I select a starting point of ten years’ imprisonment for all the accused.
9. It is a highly aggravating feature that the accused took advantage of a vulnerable girl and exploited her when she was helpless. A girl is entitled to drink with boys and is entitled to the same respect that any drinking young man would extend to any male companion. Further, victim joined the grog session on the insistence of the 3<sup>rd</sup> accused who is her cousin. 3<sup>rd</sup> accused breached that trust. She was forced to submit to the first offender by means of physical violence.
10. All five accused have clear records and are first offenders. They deserve some leniency on that account.

11. All the accused surrendered to court and cooperated with police. All of them admitted the crime to police except the 2<sup>nd</sup> accused.
12. The first accused is now 25 years old and is married without children. He asks for forgiveness and expresses remorse. He had been in remand for nearly five months.
13. The second accused is now 25 years old and married. He is supporting his family earning \$ 200 per week. He makes an apology to the Court and asks for leniency. He had been in remand for nearly six months.
14. The third accused is 20 years old. He is a farmer and works to support his family.
15. The fourth accused is 21 years old. He is a farmer. He looks after three siblings since the death of his father. He asks for leniency and forgiveness.
16. Fifth accused is 22 years old. He is also a farmer. He lives with father and looks after him.
17. For all of these accused I take the lower starting point for gang rape at ten years' imprisonment. From there I consider the case of each accused in turn.

#### **Sentence for the First Accused**

18. The first accused appears to have been the instigator and leader of this gang rape. He took the lead and facilitated others to commit the offence by holding the victim's hands and shutting her mouth. He is charged as the secondary principal participant on 2<sup>nd</sup> to 5<sup>th</sup> counts.
19. From the starting point of 10 years I add 2 years for the violence he used and for his role as the facilitator. From that total of 12 years I deduct a period of 1 year for his previous good character and for other mitigating factors. For the time he spent in remand I deduct further five months. Now his final sentence for the first count is 10 years and 7 months' imprisonment.

20. For 2<sup>nd</sup> to 5<sup>th</sup> counts, I impose a sentence of nine years' imprisonment for each count. Having considered 'one transaction' and 'totality' principles, I order that the sentences imposed on the 2<sup>nd</sup> to 5<sup>th</sup> counts to be served concurrent to the sentence imposed on the 1<sup>st</sup> count. Having considered the fact that he is a first offender and his potential to rehabilitate I impose a non parole period of eight years.

**Sentence for The Second Accused**

21. I find no aggravating factor for him. From the starting point of 10 years, I deduct 1 year for his previous good character and for other mitigating factors. For the time he spent in remand, I deduct 6 months. Now his final sentence is 8 years and 6 months' imprisonment. Having considered the fact that he is a first offender and his potential to rehabilitate, I impose a non parole period of six years.

**Sentence for The Third Accused**

22. He is the one who insisted the victim to join the grog session that ended up bringing this agony to the victim who is also his cousin. From the starting point of 10 years I add 3 months for his breach of trust as the cousin of the victim. I deduct one year for his previous good character and other mitigating factors. For the time he spent in remand I deduct 6 months. Now his final sentence is 8 years and 9 months' imprisonment. Having considered the fact that he is a first offender and his potential to rehabilitate I impose a non parole period of six years.

**Sentence for The Fourth Accused**

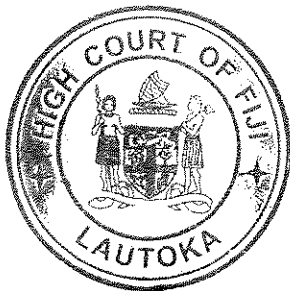
23. I find no aggravating factor for him. From the starting point of 10 years, I deduct 1 year for his previous good character and for other mitigating factors. For the time he spent in remand, I deduct 6 months. Now his final sentence is 8 years and 6 months' imprisonment. Having considered the fact that he is a young first offender and his potential to rehabilitate, I impose a non-parole period of six years.

**Sentence for The Fifth Accused**

24. From the starting point of 10 years I add nothing for aggravation of the offence. I deduct 1 year for his previous good character and for other mitigating factors. For the time he spent in remand, I deduct 6 months. Now his final sentence is 8 years and 6 months' imprisonment. Having considered the fact that he is a first offender and his potential to rehabilitate, I impose a non-parole period of six years.

25. That is the sentence imposed by this Court.

26. 30 days to appeal to the Court of Appeal.



  
**Aruna Aluthge**  
**Judge**

**At Lautoka**  
**10<sup>th</sup> June, 2016**

**Solicitors: Office of the Director of Public Prosecution for State**  
**Office of the Legal Aid Commission for 2<sup>nd</sup> Accused**  
**R.Vananalagi & Associates for 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Accused**