

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

**Criminal Case No. HAC 181 OF 2015**

**STATE**

**V**

**SAULA VASU**

**Counsel** : Mr. S. Seruvatu for the State  
: Ms. V. Narara for the Accused

**Dates of Hearing** : 5, 9 November, 2018  
**Closing Speeches** : 9 November, 2018  
**Date of Summing Up** : 9 November, 2018  
**Date of Judgment** : 12 November, 2018  
**Date of Sentence** : 29 November, 2018

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**SENTENCE**

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1. In a judgment delivered on 12 November, 2018 this court found the accused guilty and convicted him for two counts of rape as per the following information:

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**SAULA VASU**, on the 2<sup>nd</sup> day of November, 2015 at Nadi, in the Western Division, penetrated the vagina of **TALEI SENIROSI** with his penis, without her consent.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**SAULA VASU**, on the 2<sup>nd</sup> day of November, 2015 at Nadi, in the Western Division, penetrated the anus of **TALEI SENIROSI** with his penis, without her consent.

2. The brief facts were as follows:

In the morning of 2<sup>nd</sup> November, 2015 the victim was drinking beer in room No.3 at the Martintar Hotel. The room door was open. After a while she saw the accused going past the room.

3. The victim called out and asked the accused to join her, as the drinking continued the victim started to feel drunk. After a while the accused told the victim that he wanted her. The victim refused. The accused punched the victim, she stood up and went outside the room. The accused came and pulled her neck from behind and forcefully took her to his room no. 4.
4. The victim did not want to go into the room so she pushed him but the accused managed to pull her into his room. In the room the accused pushed the victim on the bed and pushed her down. The accused pulled up the victim's dress, she was screaming for help and pushing the accused he then locked the door of the room.

5. After pulling down her under wear the accused forcefully had sexual intercourse with the victim. The victim did not consent to what the accused had done to her. According to the victim she was turning, twisting and screaming for help and pushing the accused at the same time.
6. The accused held the victim's throat with one hand and with the other blocked her mouth. As the victim was trying to free herself the accused turned her around, pulled her bra and then inserted his penis into her anus. The victim was crying and calling for help. She did not consent to what the accused had done to her.
7. The accused took the victim to the bathroom here she was able to free herself and run out of the room. The accused also ran after her. At the hotel reception the police came and arrested the accused.
8. Both counsel filed written sentence submissions for which this court is grateful.
9. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
  - (a) The accused is a first offender was 28 years of age at the time of the offending;
  - (b) Married with two children 6 and 8 years respectively;
  - (c) Block layer by profession;
  - (d) Wife is pregnant;
  - (e) Sole bread winner of the family also supports his elderly parents.
10. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs the State, CAV 0003 of 2014* that the personal circumstances and family background of an accused person has little mitigatory value in cases of sexual nature.

11. The aggravating features are:

(a) Breach of Trust

The victim trusted the accused so she invited him to join her for drinks. The accused breached her trust by his actions. The victim was alone and vulnerable the accused took advantage of this as well.

(b) Use of Violence

The accused punched the victim when she refused to have sex with him and then grabbed her by the neck and then took her to his room. The victim was 20 years of age and the accused was 28 years of age. The age difference is substantial.

12. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.

13. In *Mohammed Kasim v The State* (unreported) Cr. Case No. 14 of 1993; 27 May 1994, the Court of Appeal had stated:

*“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 the starting point.”*

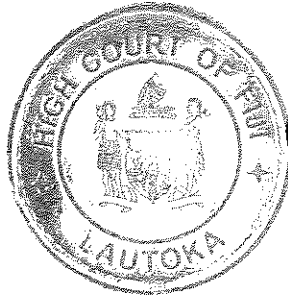
14. Section 17 of the Sentencing and Penalties Act states:

*“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.”*

15. 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 Act I prefer to impose an aggregate sentence of imprisonment for the two offences.
16. It is the duty of the court to protect women from sexual violations of any kind that is the reason why the law makers have imposed life imprisonment for the offence of rape as the maximum penalty.
17. Bearing in mind the seriousness of the offences committed I take 9 years imprisonment as the starting point of your aggregate sentence. I add 3 years for the aggravating factors, bringing an interim total of 12 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I find your good character has substantive mitigating value. I therefore reduce the sentence by 2 years. The sentence now is 10 years imprisonment.

18. I note the accused has been in remand for about 1 month and 3 days. I exercise my discretion to further reduce the sentence for the remand period by 1 month and 15 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served.
19. Under the aggregate sentencing regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for the two offences of rape is 9 years and 10 months and 15 days imprisonment.
20. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences 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.
21. Under section 18 (1) of the Sentencing and Penalties Act, I impose 8 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.
22. Mr. Vasu you have committed a serious crime against a victim who trusted you. In this case the victim had invited you to join her for drinks. I am sure it will be difficult for the victim to forget what you had done to her. Your actions towards the victim were deplorable and selfish. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. The victim was alone and vulnerable and you took advantage of this. According to the victim impact statement the victim was emotionally and psychologically affected for almost two years after the incident.

23. I am satisfied that the term of 9 years and 10 months and 15 days 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.
24. In summary I pass an aggregate sentence of 9 years and 10 months and 15 days imprisonment for the two offences of rape that the accused have been convicted of with a non-parole period of 8 years to be served before the accused is eligible for parole.
25. 30 days to appeal to the Court of Appeal.



*Sunil Sharma*  
**Sunil Sharma**  
**Judge**

**At Lautoka**

29 November, 2018

**Solicitors**

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

**Office of the Legal Aid Commission for the Accused.**