

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

**Criminal Case No.: HAC 60 of 2015**

**STATE**

**V**

- 1. INIA NAQIA**
- 2. MAIKELI SAUKURU**

**Counsel** : Ms. S. Kiran for the State.  
: Ms. V. Diroiroi for the first Accused.  
: Ms. J. Manueli for the second Accused.

**Dates of Hearing** : 16, 20, 21, 22 November, 2018  
**Closing Speeches** : 23 November, 2018  
**Date of Summing Up** : 27 November, 2018  
**Date of Judgment** : 28 November, 2018  
**Date of Sentence** : 12 December, 2018

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**SENTENCE**

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1. In a judgment delivered on 28 November, 2018 this court found both the accused persons guilty and convicted them for a count of rape as per the following:

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**INIA NAQIA** on the 3<sup>rd</sup> day of April, 2015 at Nadi in the Western Division penetrated the vagina of **ANI TINAI**, with his penis, without the consent of the said **ANI TINAI**.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**MAIKELI SAUKURU** on the 3<sup>rd</sup> day of April, 2015 at Nadi in the Western Division penetrated the vagina of **ANI TINAI**, with his penis, without the consent of the said **ANI TINAI**.

2. The brief facts were as follows:  
On 3<sup>rd</sup> April, 2015 the victim was drinking alcohol with both the accused persons in the early hours of the morning at the back of a dairy shop near Saunaka Village.
3. The drinking finished after 9am that morning. The victim went to the nearby sugar cane field to relieve herself where she blacked out. When she regained consciousness both the accused persons were holding her tight. They removed her clothes, the first accused Inia started to touch all over her body while the second accused forcefully started kissing her mouth, to stop him she bit his lips.
4. Both the accused persons took turns in having sexual intercourse with her by penetrating her vagina with their penis. The first accused had sexual intercourse first followed by the second accused. The victim did not give consent to any of the accused to have sexual intercourse with her.
5. After both the accused persons left the victim walked back to the village where she told her friend Solomon Qurai what the two accused had done to her.

6. The matter was immediately reported to the police, upon investigations both the accused were arrested and charged.
7. Both the state and defence counsel filed written sentence submissions for which this court is grateful.
8. Counsel for the accused persons presented the following details and mitigation:

**FIRST ACCUSED**

- a) The accused was 28 years of age at the time of the offending;
- b) He was a first offender;
- c) Married with 2 young children (5 years and 6 months respectively), resides with elderly parents;
- d) Unemployed assists wife in taking care of children;
- e) Promises not to re-offend, willing to reform, seeks leniency.

**SECOND ACCUSED**

- a) The accused was 20 years of age at the time of the offending;
  - b) He was a first offender;
  - c) He resides with his parents and siblings in Saunaka Village;
  - d) He is currently unemployed;
  - e) He cooperated with the police during investigation;
  - f) He seeks forgiveness.
9. 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.

10. The aggravating features are:

(a) Breach of Trust

The victim and both the accused persons were known to each other and living in the same village. Both the accused persons breached the trust of the victim by what they did to her.

(b) Vulnerable Victim

The victim was drunk, vulnerable and alone. Both the accused persons took advantage of the victim's situation and committed the unlawful acts. Two accused persons overpowering the victim.

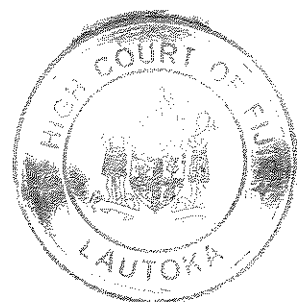
11. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under serious category of offences. The accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.


12. 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."*

13. 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.
14. Bearing in mind the seriousness of the offences committed for both the accused persons I take 8 years imprisonment as the starting point of their sentence. I add 3 years for the aggravating factors, bringing an interim total of 11 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I find their good character has substantive mitigating value. I therefore reduce the sentence by 2 years. The sentence now is 9 years imprisonment.
15. I note the accused persons have been in remand for about 1 month and 18 days. I exercise my discretion to further reduce the sentence for the remand period by 2 months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served.
16. The final sentence of imprisonment for the offence of rape is 8 years and 10 months.
17. 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.
18. 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.

19. Mr. Naqia and Mr. Saukuru you have committed a serious crime against a victim who trusted you. In this case the victim was known to both of you. I am sure it will be difficult for the victim to forget what both of 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.
20. In summary Mr. Naqia and Mr. Saukuru you are to serve a sentence of 8 years and 10 months imprisonment each for the offence of rape with a non-parole period of 8 years to be served before you are eligible for parole.
21. 30 days to appeal to the Court of Appeal



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

12 December, 2018

**Solicitors**

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

**Office of the Legal Aid Commission for Accused 1 and 2.**