

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 53 of 2019**

**STATE**

**V**

**MOROTIKEI VOCEVOCE**

**Counsel** : Ms. S. Naibe for the State.  
: Ms. A. Bilivalu for the Accused.

**Dates of Hearing** : 07, 08, 11 April, 2022

**Closing Speeches** : 12 April, 2022

**Date of Judgment** : 13 April, 2022

**Date of Sentence** : 27 April, 2022

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**SENTENCE**

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

1. In a judgment delivered on 13<sup>th</sup> April, 2022 this court found the accused guilty and convicted him for one count of rape as charged.
2. The brief facts were as follows:

On 9<sup>th</sup> November, 2017 at around 9 am the victim ( 38 years) was having tea at her home with Emosi her husband's cousin and Melai her neighbour. After a while Melai left, since she was going to Nadi, she asked the victim to

close the doors and windows of her house after the accused leaves. The victim and the accused were known to each other and she also knew the accused was a police officer.

3. After sometime, the victim went outside to get some water to wash the dishes. The accused called the victim from Melai's house asking her to close the doors and windows of Melai's house. The victim responded by saying that she will attend to it later, however, the accused kept on insisting that she closes the doors and windows of Melai's house immediately.
4. As soon as the victim entered the house through the kitchen door, the accused pulled her inside, and started touching her vagina. Thereafter, the accused forcefully made the victim lie on the floor, she tried to push him but could not. The accused was able to remove the complainant's shorts, push aside her swimming togs and then penetrated his penis into her vagina.
5. The victim started to cry, she could not believe what the accused was doing to her she did not consent to what the accused had done to her. After this, the accused stood up put on his clothes and left. The victim later told her husband about what the accused had done to her. The matter was reported to the police, the accused was arrested, caution interviewed and charged.
6. Both counsel filed written submissions, victim impact statement mitigation and supplementary mitigation for which this court is grateful.
7. The following personal details and mitigation was submitted by the counsel for the accused:
  - a) The accused is 34 years old and holds a reputable position in his church;
  - b) Is a first offender;

- c) Married with five children;
- d) Wife is pregnant with their sixth child ;
- e) Sole bread winner of the family;
- f) Cooperated with police during investigations;
- g) Promises not to reoffend.

8. 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**

9. The following aggravating factors are obvious in this case:

a) Breach of Trust

The victim and the accused were known to each other. The accused breached the trust of the victim by his actions. She trusted the accused that is why she went into the house after he had called her.

b) Victim was vulnerable

The victim was vulnerable, helpless, and unsuspecting when she entered the kitchen. The accused took advantage of this and sexually abused the victim.

c) Victim Impact Statement

In the victim impact statement the victim states that after the incident she has stopped trusting people. She also had issues with her husband as a result of what had happened.

d) Planning

There some degree of planning involved. After Melai left the accused insisted the victim immediately come to Melai's house he knew there was no one else in the house and the accused took advantage of this.

e) Prevalence of offending

There has been a notable increase in sexual offence cases by individuals known to victims.

**TARIFF**

10. The maximum penalty for the offence of rape is life imprisonment and the accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.

11. 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."*

12. Bearing in mind the objective seriousness of the offence committed I take 7 years imprisonment (lower range of the scale) as the starting point of the

sentence. The sentence is increased for the aggravating factors, and reduced for mitigation and good character. The accused is a first offender who comes to court as a person of good character. The personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive value.

13. I note the accused has been in remand for about 2 months, the sentence is further reduced in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 8 years and 6 months imprisonment.
14. 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.
15. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 years and 6 months 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.
16. Mr. Vocevoce you have committed a serious offence against the victim. She trusted you and at your insistence she entered the house. I am sure it will be difficult for the victim to forget what you had done to her. Due to your lust you did not care about the repeated pleas of the victim to stop what you were doing to her. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. According to the victim

impact statement the victim is emotionally and psychologically affected by the incident.

17. In summary, I pass a sentence of 8 years and 6 months imprisonment for one count of rape that the accused has been convicted of with a non-parole period of 7 years and 6 months to be served before he is eligible for parole.
18. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**



**At Lautoka**

27 April, 2022

**Solicitors**

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

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