

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

**Criminal Case No.: HAC 29 of 2018**

**STATE**

**V**

**AMELE WABALE**

**Counsel** : Ms. S. Naibe for the State.  
: Ms. V. Diroiroi for the Accused.

**Dates of Hearing** : 25, 27, 28 April, 2022

**Closing Speeches** : 29 April, 2022

**Date of Judgment** : 02 May, 2022

**Date of Sentence** : 17 May, 2022

---

**SENTENCE**

---

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

1. In a judgment delivered on 2<sup>nd</sup> May, 2022 this court found the accused guilty and convicted her for one count of rape, one count of sexual assault and one count of indecent assault as charged.
2. The brief facts were as follows:

In the morning of 8<sup>th</sup> February, 2018 the victim and the accused arrived at their flat after clubbing. They were flat mates and after exchange of some

jokes the victim agreed for the accused to come and sleep beside her on her single bed.

3. Unbeknown to the victim, the accused went on top of her and forcefully started kissing her mouth. The victim pulled back and asked the accused what she was doing. The accused said not to make any noise to wake Vasiti the other flat mate. The victim tried to push the accused, but could not, at this time she felt the accused hand block her mouth to stop her from making any noise.
4. The accused did not stop but forcefully continued kissing the victim's neck, breast and then made love bites on her breast and chest. The accused also pulled down the victim's panty and then put her fingers into the victim's vagina. The victim tried to get out of her bed but the accused held her down.
5. Finally, the accused forcefully put her mouth on the victim's vagina and sucked it. The victim felt uncomfortable and she did not consent to what the accused was doing to her. All this happened in 3 to 4 minutes.
6. After the accused left the victim the matter was reported to the police. The accused was arrested, caution interviewed and charged.
7. The state counsel filed written submissions and victim impact statement whereas the defence counsel filed mitigation for which this court is grateful.
8. The following personal details and mitigation was submitted by the counsel for the accused:
  - a) The accused is 44 years old;
  - b) Is a first offender;
  - c) Single mother in a defacto relationship;
  - d) Three children;
  - e) Sole bread winner for her children and parents;

- f) Co-operated with the police during investigations;
- g) Promises not to reoffend.

9. 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**

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

a) Breach of Trust

The victim and the accused were known to each other and they were flat mates. The accused breached the trust of the victim by her actions. The victim had trusted the accused that is why she had agreed to allow the accused to sleep with her.

b) Victim was vulnerable

The victim was vulnerable and unsuspecting 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 incidents she has become reserved, worthless, disgusted, ashamed and embarrassed. The incidents have affected her mentally, emotionally and spiritually. She has even lost close friends and family which has resulted in the victim losing self-esteem.

### Safety at the flat

The victim was supposed to be safe in her flat but this was not to be due to the actions of the accused.

### **TARIFF**

11. 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.
  
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. The maximum penalty for the offence of sexual assault is 10 years imprisonment. The tariff for this offence is from 2 years to 8 years imprisonment depending on the category of offending (*see State vs. Epeli Ratabacaca Laca criminal case no. HAC 252 of 2011 (14 November, 2012)*).

14. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment.
15. 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.”*
16. I am satisfied that the three 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 three offences.
17. Bearing in mind the objective seriousness of the offences committed I take 7 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors, and reduced for mitigation and good character (character references taken into account) since the accused is a first offender she comes to court as a person of good character. The personal circumstances and family background of the accused has little mitigatory value, however, her good character and other mitigation are substantive factors.
18. I note the accused has been in remand for about 1 month and 6 days, in exercise of my discretion the sentence is further reduced by 2 months 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 one count of rape, one count of sexual assault and one count of indecent assault is 7 years and 8 months imprisonment.
20. I am satisfied that the term of 7 years and 8 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.
21. 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.
22. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 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.
23. Ms. Wabale you have committed serious offences against the victim who was your flat mate. She had trusted you and at your request did not hesitate for you to sleep with her. I am sure it will be difficult for her to forget what you had done to her. Your actions towards the victim were self-centered. Due to your lustful purpose you did not care about the victim's repeated pleas 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 incidents.

24. In summary, I pass an aggregate sentence of 7 years and 8 months imprisonment for one count of rape, one count of sexual assault and one count of indecent assault that the accused has been convicted of with a non-parole period of 7 years to be served before she is eligible for parole.
25. 30 days to appeal to the Court of Appeal.

**Sunil Sharma**  
**Judge**

**At Lautoka**

17 May, 2022

**Solicitors**

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

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