

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 005 OF 2021

BETWEEN : **STATE**

AND : **NOA NAWAQARUA**

Counsel : Ms W Elo for the State
Ms A Sharma for the Accused

Date of Hearing : **24 May 2023**

Date of Judgment : **21 July 2023**

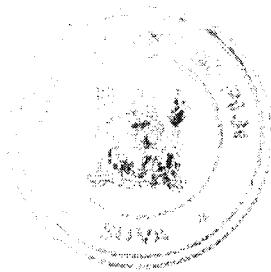
Date of Sentence : **28 July 2023**

SENTENCE

- [1] Noa Nawaqarua, you appear for sentence after being convicted of rape.
- [2] The victim is a young woman in her twenties. The incident occurred at her residence on 26 December 2019. At the time of the incident, you were in a de-facto relationship with the victim's aunt.
- [3] On invitation you accompanied your friends to the victim's residence for a drinking party on the Christmas Eve. The victim's father, brother and brother's girlfriend were present at the party. Both you and the victim consumed substantial alcohol until the early hours of 26 December 2019 when the victim lost consciousness and fell asleep. Witnesses saw you having sexual intercourse with the victim in her bedroom while she was unconscious and asleep.

- [4] When you were confronted by the witnesses, you blamed alcohol for your conduct. The victim had no recollection of the incident. When her brother woke her up she saw she was naked. She felt embarrassed and started crying.
- [5] The Court did not accept your contention that the victim consented to sex. The victim was heavily intoxicated and not in a capacity to freely and voluntarily consent to sex. You knew that she was heavily intoxicated and you took advantage of the situation.
- [6] Alcohol is not an excuse to commit a crime. In fact, intoxication is an aggravating factor. Further, there is an element of breach of trust present in this case. You were invited to the victim's home by her family because you were her aunt's partner. The victim and her family trusted you. But you breached that trust by taking advantage of the victim knowing she was heavily intoxicated and incapable of consenting. You raped her in her own home.
- [7] You are now 47 years of age. You have three children from a previous marriage. You had an unblemished character before this case.
- [8] You are a former Fiji national sevens rugby and Fiji national rugby union rep. You played in the international rugby tournaments representing Fiji in 2004 and 2005.
- [9] You are also a former prison officer. You worked for the Department of Corrections for 9 years between 2006 and 2015.
- [10] Currently, you own and run a land development business to support your family.
- [11] This crime is a fall from grace for you. Unfortunately, realization has come late.

- [12] Rape is a serious offence. The maximum sentence prescribed for rape is life imprisonment. It is an offence that is prevalent and the courts have a duty to denounce rape of women and girls in the strongest terms. The physical and psychological impact of the offence on the victims are significant. Rape is an offence that not only intrudes into personal privacy of the victims but affects their soul and dignity.
- [13] I pick 7 years imprisonment as a starting point, add 3 years for the aggravating factors and deduct 2 years (1 ½ months remand period included) for the mitigating factors.
- [14] Noa Nawaqarua, you are sentenced to 8 years imprisonment with a non-parole period of 6 years.
- [15] You may appeal to the Court of Appeal within 30 days.




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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused