

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

**Criminal Case No.: HAC 94 of 2021**

**STATE**

**V**

**BRIAN RAVATUDEI**

**Counsel** : Mr. M. Rafiq for the State.  
: Mr. S. Heritage for the Accused.

**Dates of Hearing** : 25, 26 and 27 July, 2023  
**Closing Speeches** : 28 July, 2023  
**Date of Judgment** : 31 July, 2023  
**Date of Sentence** : 22 August, 2023

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**SENTENCE**

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

1. In a judgment delivered on 31<sup>st</sup> July, 2023 this court found the accused guilty and convicted him for one count of rape as charged.
2. The brief summary of facts were as follows:
  - a) The victim (19 years of age) in 2021 was recruited by the Fiji Police and sent to work at the Lautoka Police Station. The victim and

the accused are known to each other, they were police officers occupying the police barracks. During the evening of 19<sup>th</sup> September, 2021 the accused followed the victim to her room after she finished having her shower. When outside the victim's room door the accused told the victim that he wanted to apologize for something he had done and leave. Initially the victim told the accused to wait until she has worn her clothes but the accused continued to insist that she open the door.

- b) The victim opened the door allowing the accused to enter her room at this time the victim was still wrapped in her bath towel. When the accused entered the room he grabbed the victim from behind removed her towel and threw her on the bed. The victim was scared and she told the accused not to do anything to her. The accused did not listen and he forcefully lay on the victim's chest removed his clothes and then threatened the victim not to do anything or say anything otherwise he will do something to her.
  - d) After this the accused forcefully spread the victim's legs and inserted his erected penis inside her vagina and had forceful sexual intercourse with the victim. The victim did not consent for the accused to have sexual intercourse with her. When the accused did not stop the victim started crying she again told the accused to stop but the accused kept forcing his penis inside her vagina and also kept kissing her neck.
  - e) Next day the victim told her friend and colleague about what the accused had done to her the matter was reported to the police. The accused was arrested, caution interviewed and charged.
3. The state counsel filed written sentence submissions with the victim impact statement and the defence counsel filed mitigation for which this court is grateful.

4. The following personal details and mitigation was submitted by the counsel for the accused:
- a) The accused is now 27 years old;
  - b) First offender;
  - c) Looks after his elderly parents and his siblings;
  - d) Is the eldest of the three brothers;
  - e) Is the sole breadwinner of the family;
  - f) Works in the family farm;
  - g) Is an active member of the community and the church;
  - h) Had cooperated with police during investigation;
  - i) Seeks leniency of the court;
  - j) Is remorseful for what he has done.
5. 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**

6. The following aggravating factors are obvious in this case:
- a) Breach of Trust

The victim and the accused were police officers and both were accommodated at the same police barracks. The victim trusted the accused that is why she had opened the door of her room and allowed the accused to enter. The accused grossly breached the trust of the victim by his action.

b) Victim was vulnerable

The victim was vulnerable, alone, helpless and unsuspecting the accused took advantage of this and sexually abused the victim in her room.

c) Prevalence of the offending

There has been an increase in sexual offence cases by people known to the victim. The accused was bold and undeterred in what he did to the victim.

d) Safety of the victim

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

e) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

- a) Is ashamed of what the accused did to her;
- b) Became suicidal as a result of the incident;
- c) Had to suffer a lot with boyfriend and family;
- d) Could not focus or concentrate at work.

**TARIFF**

7. 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.

8. 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.”*

9. 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 (character references taken into account). Although the personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive value.
10. I also note the accused has been in remand for about 1 month and 4 days, in exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 1 month and 10 days as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 7 years, 10 months and 20 days.
11. 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.

12. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 years and 2 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. However, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
13. Mr. Ravatudei you have committed a serious offence against the victim. She was your work colleague who trusted you and was staying in the same police barrack as you. 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 consequences of your actions.
14. As a police officer you should have known better instead of protecting the victim you violated her. All your training as a police officer has gone to a waste. You have not only brought shame on yourself and your family but to the entire police force which demands an impeccable and flawless behaviour at all times. This court will be failing in its duty if a long term deterrent custodial sentence is not imposed. According to the victim impact statement the victim is emotionally and psychologically affected by the incident to the extent that she became suicidal due to no fault of hers.

15. In summary, I pass a sentence of 7 years, 10 months and 20 days imprisonment for one count of rape the accused has been convicted of with a non-parole period of 7 years and 2 months to be served before he is eligible for parole.

16. 30 days to appeal to the Court of Appeal.

  


**Sunil Sharma**  
**Judge**

**At Lautoka**

22 August, 2023

**Solicitors**

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

**Messrs Iqbal Khan & Associates for the Accused.**