

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

**Criminal Case No.: HAC 12 of 2021**

**STATE**

**V**

**PRAVEEN PRASAD RAM**

**Counsel** : Ms. E. Cabemaiwai for the State.  
: Mr. B. Makanji and Mr. A. Waqavakatoga for the  
Accused.

**Dates of Hearing** : 13, 14 August, 2024  
**Closing Speeches** : 16 August, 2024  
**Date of Judgment** : 16 August, 2024  
**Date of Sentence** : 06 September, 2024

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**SENTENCE**

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

1. In a judgment delivered on 16<sup>th</sup> August, 2024 this court found the accused guilty and convicted him for two counts of rape as charged.
2. The brief facts were as follows:
  - a) On 15<sup>th</sup> December, 2020 the accused offered a lift to the victim in his car on the pretext of dropping her home. The victim is a special

needs individual who is deaf and mute. However, instead of dropping her where she wanted to get off the accused threatened the victim and drove her to Votualevu to a hotel where he booked a room. The accused forcefully pulled the victim out of the car and walked her to the room.

- b) In the room the accused forcefully removed the victim's clothes and he started to smoke. The victim was scared of the accused after a while the accused overpowered the victim and forcefully inserted a piece of soap and two cigarette buds into her vagina. The victim did not consent to what the accused had done to her. The accused dropped the victim at Namaka and left.
- c) The victim reported the matter to the police. The victim was medically examined, the doctor noted a tear on the vaginal opening and had removed two cigarette buds and a piece of soap from inside the victim's vagina. The accused was arrested, caution interviewed and charged.

3. The state counsel filed sentence submissions including the victim impact statement and the defence counsel filed mitigation for which this court is grateful.

4. The counsel for the accused provided the following personal details and mitigation on behalf of the accused:

- a) The accused is 47 years of age;
- b) Was in a defacto relationship;
- c) Has two children aged 11 and 18 years;
- d) Is a Taxi Proprietor;
- e) Used to earn \$500.00 a week.

5. 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.

#### **AGGRAVATING FACTORS**

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

The accused had offered to drop the victim at her home, in reliance of this the victim sat in the accused car. The accused breached the trust of the victim by not stopping at the place where she wanted to get off but taking her elsewhere and sexually abusing her.
  - b) Victim was alone and vulnerable

The victim was alone, scared and vulnerable. The accused was undeterred and bold in overpowering the victim.
  - c) Planning

There is a high degree of planning by the accused after he realized the victim was deaf and mute. He was in control of the vehicle and the situation so he took full advantage of the victim to her detriment.
  - d) Victim Impact Statement

In the victim impact statement the victim mentions that she is fearful of the accused and she is ashamed, humiliated and stressed by what the accused did to her.

## **TARIFF**

7. The maximum penalty for the offence of rape is life imprisonment 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. 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.”*

10. I am satisfied that the two 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 two offences.

11. Bearing in mind the objective seriousness of the offences committed I take 7 years imprisonment (lower end of the tariff) as the starting point of the aggregate sentence. I add 5 years for the aggravating factors, bringing an interim total of 12 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I accept his good character has substantive mitigating value (I have disregarded his previous convictions which are unrelated to the current offences). I further reduce the sentence by 2 years for mitigation. The sentence is now 10 years imprisonment.
12. I note the accused has been in remand for 2 months and 23 days. In exercise of my discretion the sentence is further reduced by 3 months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final aggregate sentence of imprisonment is 9 years and 9 months.
13. 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.
14. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand 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.

15. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 Calanchini P (as he was) said:

*[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.*

16. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

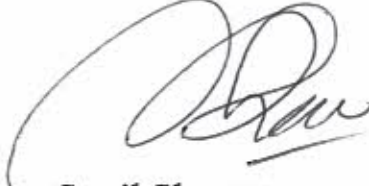
*Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be lost. The difference of only one year in this case was insufficient. I would increase the*

*difference to two years. I would therefore reduce the non-parole period in this case to 12 years.*

17. Considering the above, 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 and also meet the expectations of the community which is just in the circumstances of this case.
18. Rape not only affects the integrity of a victim, but violates the human dignity, leaving lifelong scars of psychological devastation bringing about a sense of self blame and hopelessness which does not heal easily even long after the physical injuries have healed.
19. Mr. Ram you have committed serious offences against the victim. I am sure it will be difficult for her to forget what you had done. You have not only brought shame to yourself, but also to your family, your actions can best be described as selfish and lustful. For your gratification you had no regard for the victim. You had taken advantage of an innocent special needs individual. It is only appropriate that you be put away from the society for a long time. The victim was unsuspecting and vulnerable you targeted the victim who was alone looking for transport to go home.
20. 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 continues to be emotionally and psychologically affected by the incidents.
21. In summary, I pass an aggregate sentence of 9 years and 9 months imprisonment for two counts of rape the accused has been convicted of with a non-parole period of 8 years to be served before he is eligible for parole.



22. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
Judge



**At Lautoka**  
06 September, 2024

**Solicitors**

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

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