

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 66 of 2013**

**BETWEEN:**

**THE STATE**

**AND:**

**DANIELE NAULUVULA**

**Counsel:** Mr. S. Vodokisolomone for State  
Mr. R. Tagivakatini for Accused

**Date of Hearing:** 29 - 30 December 2014

**Date of Sentence:** 31 December 2014

**SENTENCE**

- [1] Following a trial, the Accused was convicted of one count each of assault occasioning actual bodily harm and rape. The victim was a single mother of three children. She accompanied the Accused and some friends for a drinking session. When she left the group and was returning home, the Accused approached her to accompany him for more drinks. When they arrived at an isolated location, the Accused grabbed her arms and forced her on the ground. When she resisted, he punched her in the neck and threatened to kill her if she shouted. He then forcefully removed her clothes from



waist down and raped her. When he got distracted by a phone ringtone, she escaped and returned to her village.

- [2] Counsel for the Accused offered mitigation on his behalf because the Accused chose not to attend his trial. The Accused is 43 years old and married with a child. He supports his family by farming. He is a first time offender. He was in custody on remand for about three weeks.
- [3] I consider the following to be the aggravating factors:
- (i) The Accused was related to the victim. He is married to her aunt. They lived in the same village. There is a breach of trust.
  - (ii) The Accused used physical violence on the victim and threatened to kill her if she raised alarm.
  - (iii) The Accused was drunk when he committed the offences.
- [4] The maximum penalty for assault occasioning actual bodily harm is 5 years' imprisonment. The maximum penalty for rape is life imprisonment. The gravity of this offence is reflected in the maximum sentence of life imprisonment provided by the Crimes Decree. The assault was committed to subdue the victim from resisting. She was entitled to say no to sex despite the fact she accompanied the Accused to an isolated location to consume alcohol. A woman has full autonomy over her body. Sexual violation of a woman's body deserves condign punishment by the courts to denounce and deter such violation.
- [5] Fortunately, the victim was not seriously injured. But there is evidence of psychological trauma. The victim said she felt ashamed of the sexual assault. She was afraid of being stigmatized in her village. That is why she did not immediately report the sexual assault to her relatives. In a patriarchal society like ours, reporting of sexual assault by a female victim against a male family member can be traumatic for her because she does not know how the family will react to the allegation. The rape victim is further traumatised when her perpetrator takes no responsibility for his conduct and causes her to give evidence of sexual nature.



- [6] I use rape as the head offence. I start with 7 years' imprisonment and increase the sentence to 11 years to reflect the aggravating factors. I reduce the sentence to 9 years' imprisonment to reflect the Accused's personal circumstances, previous good character and remand period.
- [7] For rape, I sentence the Accused to 9 years' imprisonment. For assault occasioning actual bodily harm, I sentence the Accused to 6 months' imprisonment. I treat both offences as part of one transaction. The sentences are made concurrent. I impose a non-parole period of 6 years. Upon arrest, the Accused is to be committed to the prison to serve his sentence.



Daniel Goundar

**JUDGE**



At Labasa

31 December 2014

**Solicitors:**

Office of the Director of Public Prosecution for State

Office of the Director of Legal Aid Commission for Accused