

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

**Criminal Case No.: HAC 84 of 2022**

**STATE**

**V**

**SAKIUSA NAMOCE**

<b>Counsel</b>	:	Mr. J. Nasa for the State.
	:	Ms. A. Sharma and Ms. L. Naikawakawavesi for the Accused.
<b>Date of Hearing</b>	:	06 September, 2023
<b>Closing Speeches</b>	:	07 September, 2023
<b>Date of Judgment</b>	:	08 September, 2023
<b>Date of Sentence</b>	:	27 September, 2023

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**SENTENCE**

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

1. In a judgment delivered on 8<sup>th</sup> September, 2023 this court found the accused guilty for one count of assault with intent to commit rape and convicted him accordingly.
2. The brief facts were as follows:

- a) The victim and the accused are known to each other, the accused is the paternal uncle of the victim. On 14<sup>th</sup> February, 2022 the 17 year old victim was at the house of her aunt Makelesi when one of the victim's uncle Siliveno at about 10am called the victim. The victim went and joined her uncle Jese, Siliveno and the accused in drinking beer.
- b) As the drinking continued the victim went into the bedroom of her uncle Ratu and wore his sunglass. Uncle Jese saw this and scolded the victim for taking the sunglass from Ratu's bedroom. The victim sought forgiveness and gave the sunglass to her uncle. After Jese left the victim went and laid on the bed in the room.
- c) The accused went onto the bed where the victim was lying and he tried to pull down her pants. When the victim resisted the accused punched her thigh. The victim told the accused not to punch her, from the behaviour of the accused the victim realized that the accused wanted to have sex with her. At this time the accused managed to pull down the victim's pants a little.
- d) The accused continued to pull down the victim's pants and was punching her. Jese came into the room and stopped the accused from what he was doing to the victim. At this time the victim left the room and went into the washroom to relieve herself. The accused followed, pushed open the door of the washroom and then pushed the victim and said *"go in there so I can fuck you"*.
- e) The accused punched the victim on her abdomen and thighs and pulled down her pants and panty to her thighs. The victim pushed the accused and went out of the washroom. The accused also came out and threw

the victim into the bathroom and punched her right eye causing a black eye.

- f) The accused continued punching the victim and was forcefully pulling down her pants and repeatedly saying that he will fuck her. When the victim came out of the bathroom the accused pushed her on the floor in the passage of the house and kept punching and kicking her. The victim's uncle Jese came and stopped the accused and the victim's aunt Fatai came and took the victim away and poured some ice water on the eye of the victim.
  - g) The matter was reported to the police and the victim was medically examined. The doctor found injuries and tenderness on the victim's head, right eye and both sides of the abdomen. The accused was arrested, caution interviewed and charged.
- 3. The state counsel filed written submissions 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 a first offender;
    - b) He was 42 years at the time;
    - c) A welder by profession;
    - d) Was earning \$430.00 per week;
    - e) Promises not to reoffend.

### **AGGRAVATING FACTORS**

- 5. The following aggravating factors are obvious in this case:

a) Breach of Trust

The victim and the accused are known to each other the accused is the uncle of the victim. The accused grossly breached the trust of the victim by his actions.

b) Victim was vulnerable and unsuspecting

The victim was vulnerable and unsuspecting the accused took advantage of this. The accused overpowered the helpless victim. The victim was 17 years whereas the accused was 42 years. The age difference is substantial. The accused was a mature adult who should have known better.

c) Prevalence of the offending

There has been an increase in cases involving juvenile victims perpetrated by mature adults. The accused was bold and undeterred in what he did to the victim that day.

d) Sanctity of the relationship

By his actions the accused has broken the sanctity of the relationship that exists between an uncle and niece.

## **TARIFF**

6. The maximum penalty for the offence of assault with intent to commit rape is 10 years imprisonment. The tariff for this offence is 1 year to 4 years imprisonment which is 10 years old see *Jone Tabaka vs. State, Criminal Appeal No. HAA 05 of 2013*.

7. From the time of the above tariff till now there has been a surge in offences of sexual nature, assault with intent to commit rape and other related offences. The Supreme Court established a new tariff for the offence of rape of juveniles in *Gordon Aitcheson vs. The State, Criminal Petition no. CAV 0012 of 2018 (02 November, 2018)* by revisiting the tariff in *Anand Abhay Raj v the State, CAV 003 of 2014 (20 August 2014)* within four years.
8. In view of the above, it is only proper that a new tariff for the offence of assault with intent to commit rape be established. In my considered judgment a range between 2 years to 8 years would be a fair sentencing range depending on the mitigating and aggravating factors.
9. Bearing in mind the objective seriousness of the offence committed I take 2 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.
10. I note from the court file that the accused was remanded for 7 months and 14 days. In exercise of my discretion I reduce the sentence by 7 months and 20 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence for one count of assault with intent to commit rape is 3 years, 4 months and 10 days imprisonment.
11. Since the final sentence is more than 3 years this court cannot exercise its discretion under section 26 (2) (a) of the Sentencing and Penalties Act to suspend the imprisonment term. Furthermore, in this case the culpability of the accused and the harm caused to the victim are obvious.

12. Mr. Namoce, you have committed a serious offence against your unsuspecting and vulnerable niece you were forcefully making her submit to you so that you could have sexual intercourse with her and in the process you caused her injuries.
13. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim of 17 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was 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. Considering the above, I impose 2 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.
16. In summary I pass a sentence of 3 years, 4 months and 10 days imprisonment with a non-parole period of 2 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

17. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**

**At Lautoka**

27 September, 2023

**Solicitors**

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

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