

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

**Criminal Case No.: HAC 180 of 2022**

**STATE**

**V**

**MATAIASI CURU**

<b>Counsel</b>	:	Mr. U. Lal for the State.
	:	Ms. L. Taukei for the Accused.
<b>Dates of Hearing</b>	:	14, 15, 16 February, 2024
<b>Closing Speeches</b>	:	20 February, 2024
<b>Date of Judgment</b>	:	21 February, 2024
<b>Date of Sentence</b>	:	11 March, 2024

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**SENTENCE**

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

1. In a judgment delivered on 21<sup>st</sup> February, 2024 this court found the accused guilty and convicted him for one count of sexual assault, two counts of rape, one count of assault causing actual bodily harm and one count of breach of domestic violence restraining order.
2. The brief facts were as follows:
  - a. The victim and the accused were in a defacto relationship since 2013, on 11<sup>th</sup> October, 2022 the victim took out a domestic violence

restraining order against the accused. An interim non-molestation order was granted by the Magistrate's Court against the accused under section 27 of the Domestic Violence Act. One of the orders was for the accused not to physically assault or sexually abuse the victim.

- b. On 19<sup>th</sup> October, 2022 the interim DVRO was served on the accused and he was explained the orders and the consequences of non-compliance. After the interim DVRO was served on the accused he left the house with the car which was co-owned by the accused and the victim.
- c. On 5<sup>th</sup> November in the afternoon the victim unbeknown to the accused took possession of the car from the driver who was driving the car. The accused on the same day went to the house of the victim to get his car back since the victim was not at home he waited for her to return.
- d. At about 10pm the victim came in the car driven by one of her nephews, the accused approached the victim for the return of the car but she refused. Since it was late night the victim's nephews left. The accused and the victim were sitting in the car, the accused was in the driver's seat and the victim in the front passenger seat. Whilst talking the accused leaned over the victim went onto her chest and forcefully pushed up her top and bra and licked and/or sucked the victim's breast. The victim did not want the accused to do this to her and she did not like what the accused had done.
- e. Since it was early morning (6<sup>th</sup> November) and both were sitting in the car outside the gate the accused told the victim that he wanted to sleep in her flat so she can keep the car keys and they can sort

out the car issue in the morning. The victim allowed the accused inside the flat.

- f. When inside the flat the accused said he was hungry so the victim went into the kitchen to prepare some food. At this time, the accused followed the victim into the kitchen. In the kitchen the accused removed his pants and he forcefully pushed the head of the victim below his waist and forcefully penetrated his erected penis into the victim's mouth.
- g. After this, the accused held the arm of the victim and took her into the bedroom where he pushed the victim on the bed removed her clothes and forcefully penetrated her vagina with his penis. On all the above instances the victim did not consent for the accused to do what he had done.
- h. The victim could not go and report the matter to the police immediately because the accused was in the house and she was scared of him. In the morning of 8<sup>th</sup> November there was an argument between the victim and the accused. The accused pushed the victim towards the grill door, in trying to control herself she injured her right index (pointer) finger by getting in contact with the protruding mesh wire in the grill door, and in the process she fell on the floor.
- i. The injured finger started to bleed, she left the flat and reported the matter at the Vitogo Police Post. The victim was medically examined according to the medical reports a 3 cm laceration was seen on the right index finger of the victim and multiple lacerations and abrasions were noted in the vaginal area of the victim due to forceful penetration.

- j. The accused was arrested, caution interviewed and charged. By committing the above offences the accused breached the interim DVRO which prohibited the accused from physically assaulting and sexually abusing the victim.
3. The state counsel filed written sentence submissions and the defence counsel filed mitigation for which this court is grateful.
4. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
  - a). The accused is a first offender;
  - b). Is 47 years of age;
  - b). He has three children and two grandchildren;
  - c). Was a Marine Engineer earning \$3,000.00 per month.
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 features are obvious:

- (a) Breach of Trust

The victim is the defacto partner of the accused they have been living together for about 9 years. The victim trusted the accused so she allowed him into her flat. The accused grossly breached the trust of the victim by his actions.

(b) Planning

There is a degree of planning by the accused he knew what he was doing and he executed his plan by telling the victim that she can keep the car keys and they will talk about the car in the morning.

(c) Prevalence of the offending

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

(d) Safety of the victim

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

(d) Vulnerable Victim

The victim was vulnerable and helpless she could not do anything. The accused knew this and he took advantage of the situation.

### **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. The maximum penalty for the offence of sexual assault is 10 years imprisonment. The tariff for this offence is from 2 years to 8 years imprisonment depending on the category of offending (*see State vs. Epeli Ratabacaca Laca criminal case no. HAC 252 of 2011 (14 November, 2012)*). At paragraphs 6 and 7 Madigan J. had stated the following:

*6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in Abdul Kaiyum HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.*

*7. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:*

**Category 1** *(the most serious)*

*Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*

## **Category 2**

*(i) Contact between the naked genitalia of the offender and another part of the victim's body;*

*(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*

*(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*

## **Category 3**

*Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).*

*8. These very sensible categories of offending are adopted by this Court and they provide a very useful guide to sentencing within the tariff of two to eight years.*

10. The maximum penalty of the offence of assault causing actual bodily harm is 5 years imprisonment.
11. The maximum penalty for breach of Domestic Violence Restraining Order for a first offender is a fine of \$1,000.00 and 12 months imprisonment.
12. 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.”*


13. I am satisfied that the five offences for which the accused stands convicted are offences founded on the same facts and are of the same and 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 five offences.
14. Bearing in mind the objective seriousness of the offences committed I take 7 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors, and reduced for mitigation and good character. Although the personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation have substantive value.
15. I also note the accused has been in remand for about 1 year 4 months and 1 day in exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 1 year and 5 months as a period of imprisonment already served.
16. The final aggregate sentence of imprisonment for one count of sexual assault, two counts of rape, one count of assault causing actual bodily harm and one count of breach of domestic violence restraining order is 8 years and 7 months imprisonment.
17. 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.

18. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 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 which is just in the circumstances of this case.
19. 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.
20. Mr. Curu, you have committed serious offences against your defacto partner who trusted you and was doing a good deed by allowing you into her flat at your request and then preparing food for you during the early hours of the morning. This is not the way to repay her for her kindness. I am sure it will be difficult for the victim to forget what you had done to her. Your actions towards the victim were deplorable and selfish. This court will be failing in its duty if a deterrent custodial sentence is not imposed.
21. I am satisfied that the term of 8 years and 7 months imprisonment 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 offence.

22. In summary I pass an aggregate sentence of 8 years and 7 months imprisonment for the five counts the accused has been convicted of with a non-parole period of 7 years to be served before the accused is eligible for parole.
23. Since the victim and the accused are in a domestic relationship a permanent non-molestation and non-contact orders are issued forthwith for the protection of the victim.
24. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**



**At Lautoka**

11 March, 2024

**Solicitors**

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

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