

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

**Criminal Case No.: HAC 58 of 2020**

**STATE**

**V**

**WILIAME SUKANATABUA**

**Counsel** : Mr. A. Singh, Ms. S. Swastika and Mr. U. Lal for  
the State.  
: Ms. B. Mohammed and Ms. S. Ali for the Accused.

**Dates of Hearing** : 01, 02, 03 March, 2023  
**Closing Speeches** : 07 March, 2023  
**Date of Judgment** : 08 March, 2023  
**Date of Sentence** : 29 March, 2023

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**SENTENCE**

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

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

The victim, a 62 year old Caregiver came to Fiji for a holiday. She checked in at a resort since this was her second trip at the same resort as a kind gesture the victim brought gifts for her friends mainly the resort staff.

3. Since the victim was a returning guest on 6<sup>th</sup> March, 2020 she was invited by the resort management to an evening party and dinner. The victim had a few drinks followed by dinner. The staff had also organized an Island Night which was mainly a fund raiser by one of the landowning groups. This fund raiser involved drinking of kava in which the victim took part.
4. By the time the victim went to her bure it would have been around midnight. After the victim had changed into her nighty and as she was preparing to go to sleep she heard a knock on the door. It was one of her friends and a staff member Joe who had come to collect his gift. The victim opened the door and gave the gift to Joe.
5. Shortly after Joe left the accused went near the victim's bure and started yelling "*security! security! open the door let me in what was that person doing*". The victim got scared after closing and locking the door she tried to call one of her friends from her mobile phone but she was unable to dial out due to her nervousness.
6. The yelling continued the accused was saying "*let me in you have to answer some questions*" the victim opened the door and let the accused in. The accused went and sat in the lounge took out his phone and started watching a porn video of an elderly couple having sexual intercourse. At this time the accused made a remark that he had a fantasy for older women and such videos made him click.

7. The accused asked the victim to get a can of beer the victim went to the fridge and got a can of beer. By this time the accused went and sat on the bed he then called the victim to come and watch the video. The victim went and sat beside the accused and watched the video on the accused phone.
8. After a while the accused asked the victim if he could kiss her the victim refused, at this time the accused pushed the victim on the bed and forcefully started kissing her.
9. The victim does not remember when her underwear was removed the next moment the accused was on top of the victim. He pulled her in an upright sitting position opened her legs, he then forcefully inserted his penis into her vagina and then he went into a standing position. Even in this position the penis of the accused was in the victim's vagina. The victim did not consent to what the accused had done to her.
10. After this the accused left the victim and went to the bathroom. When he came back he made the following remarks *"you can now tell people that you have been with a boy with a big black dick and "you made my dream come true"*.
11. The victim could not believe what had just happened she started crying had a shower and went to bed but she could not sleep. In the morning the victim was seen by Josaia Namuva in a distressed state. The incident was reported to the police. The accused was arrested, caution interviewed and charged.
12. The state counsel filed written sentence submissions with the victim impact statement and the defence counsel filed mitigation for which this court is grateful.

13. The following personal details and mitigation was submitted by the counsel for the accused:

- a) The accused is 26 years old;
- b) First offender;
- c) Is married and has 2 children;
- d) Is a Chef by profession;
- e) Was earning \$200.00 net per week;
- f) Sole bread winner of the family.

14. 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**

15. The following aggravating factors are obvious in this case:

- a) Breach of Trust

The victim was a guest of the resort where the accused was employed. She trusted the accused that is why she allowed the accused to enter her bure. The accused impersonated and misrepresented to the victim that he was a security guard. The victim grossly breached the trust of the victim.

- b) Victim was vulnerable

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

c) Planning

There is some degree of planning by the accused he knew the victim was alone and when he saw Joe at the victim's bure the accused made a plan to firstly scare the victim since staff were not allowed into guest accommodation at night and then he sexually abused her.

d) Prevalence of the offending

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

e) Safety of the victim

The victim was supposed to be safe in her bure as a guest but this was not to be due to the actions of the accused.

f) Victim Impact Statement

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

- a) Cannot stay in a room with man;
- b) Increased anger and depression;
- c) Has lost trust in men.

The victim in her evidence stated that after the incident she became suicidal and on two occasions she tried to commit suicide. The victim has undergone psychological assessment, counseling, depression, and trauma treatment as a result of the incident.

## **TARIFF**

16. 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.
17. 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.”*
18. 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. The accused is a first offender who comes to court as a person of good character. The personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive value.
19. I also note the accused has been in remand for about 5 months and 20 days, in exercise of my discretion the sentence is further reduced by 6

months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 9 years imprisonment.

20. 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.
21. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 years and 6 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.
22. Mr. Sukanatabua you have committed a serious offence against the victim. She trusted you and at your insistence allowed you to enter her bure. 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 on the elderly victim who was a guest in the resort that employed you. 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 and has lost the zeal to live her life.
23. In summary, I pass a sentence of 9 years imprisonment for one count of rape that the accused has been convicted of with a non-parole period of 7 years and 6 months to be served before he is eligible for parole.

24. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**

**At Lautoka**

29 March, 2023

**Solicitors**

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

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