

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

**Criminal Case No.: HAC 106 of 2015**

**STATE**

**V**

**PAULIASI RAISELE**

**Counsel** : Ms. S. Kiran for the State.  
: Mr. K. Tunidau for the Accused.

**Dates of Hearing** : 23, 24, 31 July, 6, 7, 8, August, 2018  
**Closing Speeches** : 09 August, 2018  
**Date of Summing Up** : 10 August, 2018  
**Date of Judgment** : 13 August, 2018  
**Date of Sentence** : 24 August, 2018

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**SENTENCE**

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

1. In a judgment delivered on 13 August, 2018 this court found the accused guilty and convicted him of one count of rape as per the following information:

***Statement of Offence***

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009.

### ***Particulars of Offence***

**PAULIASI RAISELE** between the 1<sup>st</sup> day of January 2015 and 31<sup>st</sup> day of January 2015 at Nadi in the Western Division, penetrated the vagina of “**PD**” with his penis without the consent of the said “**PD**”.

2. The brief facts were as follows:

The victim is the sister in law of the accused who was living with the accused and his wife at Malawai, Nadi. In January, 2015 the victim was 17 years of age and a school student.

3. On 25 January, 2015 the victim was alone at home since the other family members had gone to church. After cooking, she went to have her shower in the bathroom. Whilst in the bathroom, the accused came and opened the bathroom door. The bathroom did not have a lock. When the accused opened the bathroom door, the victim was wearing her bra and panty, the victim screamed and told the accused that he was not supposed to be doing this and he was not to come inside the bathroom.

4. The accused told the complainant that he wanted to have a relationship with her. The complainant replied that this cannot be because he was her brother in law. The accused wanted to have sexual intercourse with her and said that he was the boss of the house and he was the one who looks after everyone in the house.

5. The accused pushed the victim on the floor removed her panty and forcefully inserted his penis into her vagina. After having sexual intercourse the accused told the victim not to tell his wife about what had happened.

6. The victim was scared and did not know what to do she felt numbness from her hip downwards. The victim did not consent to what the accused had done to her.

7. The matter was later reported to the police.

8. Both counsel have filed written submissions for which the court is grateful.
9. Counsel for the accused presented the following personal details and mitigation on behalf of the accused.
  - (a) The accused is a first offender;
  - (b) He was 43 years of age at the time of the offending;
  - (c) He is married, has 4 Children;
  - (d) He was employed as a Storeman at the time of the offending;
  - (e) He is not a violent person and there is no evidence of any violence used against the victim.
10. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v 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.
11. The aggravating features are:
  - (a) Breach of Trust

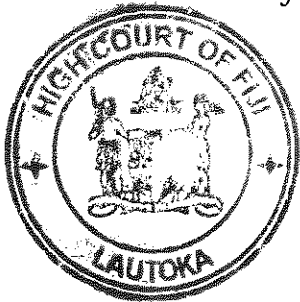
The victim is the sister in law of the accused who was living with the accused and his family and going to school from his house. The victim trusted the accused who breached this trust by his conduct.
  - (b) Planning

The accused had planned to do what he did. He knew all the members of the family were attending the Sunday church service and the victim was alone at home. Furthermore, the victim was helpless and vulnerable at the time of the offending.
  - (c) Age Difference

The victim was 17 years of age whereas the accused was 43 years of age. The age difference was substantial.


12. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The Supreme Court of Fiji in *Anand Abhay Raj (supra)* has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment. The offence committed is very serious and a long term imprisonment cannot be avoided.
13. Bearing in mind the objective seriousness of the offence committed, I take 10 years imprisonment as the starting point of the sentence. I add 4 years for the aggravating factors bringing the interim total to 14 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I find the accused's good character has substantive mitigating value. I therefore reduce the sentence by 2 years. The interim sentence is 12 years imprisonment.
14. I note the accused has been in remand for about 26 days, in exercise of my discretion I allow a reduction of one month. In accordance with section 24 of the Sentencing and Penalties Act I reduce the sentence by 1 month as a period of imprisonment already served by the accused. The final sentence is 11 years and 11 months imprisonment.
15. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim who was 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 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.
16. Under section 18 (1) of the Sentencing and Penalties Act, I impose 10 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.

17. Mr. Raisele, you have committed a very serious offence on your sister in law who had come to stay with you and your family and get educated. You have not only breached her trust but have taken advantage of the fact that she was alone at home. You have scarred the life of this innocent unsuspecting vulnerable victim for your sexual gratification and lustful desires.
18. This court has an obligation to protect the vulnerable from any form of sexual violations therefore an immediate long term imprisonment is warranted. You ought to have known better and restrained yourself from doing what you did.
19. In summary I pass a sentence of 11 years and 11 months imprisonment for one count of rape that the accused has been convicted of with a non-parole period of 10 years to be served before the accused is eligible for parole.
20. 30 days to appeal to the Court of Appeal.



**At Lautoka**

**24 August, 2018**



**Sunil Sharma**  
**Judge**

**Solicitors**

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

**Kevueli Tunidau Lawyers, Lautoka for the Accused.**