

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

**Criminal Case No.: HAC 6 of 2018**

**STATE**

**V**

**PENI QARO**

**Counsel** : Ms. R. Uce and Ms. S. Navia for the State.  
: Ms. J. Singh for the Accused.

**Dates of Hearing** : 20, 21, 24 September, 2018  
**Closing Speeches** : 25 September, 2018  
**Date of Summing Up** : 26 September, 2018  
**Date of Judgment** : 28 September, 2018  
**Date of Sentence** : 12 October, 2018

---

**SENTENCE**

---

1. In a judgment delivered on 28 September, 2018 this court found the accused guilty and convicted him for all the counts as per the following information:

**COUNT 1**

***Statement of Offence***

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

***Particulars of Offence***

**PENI QARO** on the 24<sup>th</sup> of December, 2017 at Sigatoka in the Western Division had carnal knowledge with **UNAISI NAREZIA** without her consent.

**COUNT 2**

***Statement of Offence***

**ASSAULT CAUSING ACTUAL BODILY HARM:** Contrary to section 275 of the Crimes Act 2009.

***Particulars of Offence***

**PENI QARO** on the 24<sup>th</sup> of December, 2017 at Sigatoka in the Western Division assaulted **UNAISI NAREZIA** thereby causing her actual bodily harm.

**COUNT 3**

***Statement of Offence***

**CRIMINAL INTIMIDATION:** Contrary to section 375 (1) (a) and (i) (v) of the Crimes Act 2009.

***Particulars of Offence***

**PENI QARO** on the 24<sup>th</sup> of December, 2017 at Sigatoka in the Western Division without lawful excuse threatened to injure **UNAISI NAREZIA** with a chair, with intent to cause alarm to the said **UNAISI NAREZIA**.

**COUNT 4**

***Statement of Offence***

**BREACH OF DOMESTIC VIOLENCE RESTRAINING ORDER:**

Contrary to section 77 (1) (a) of the Domestic Violence Act 2009.

***Particulars of Offence***

**PENI QARO** on the 24<sup>th</sup> of December, 2017 at Sigatoka in the Western Division breached the Domestic Violence Restraining Order number 218/17 of the Sigatoka Magistrate Court dated 5<sup>th</sup> of December, 2017 by committing the above named offences against **UNAISI NAREZIA**, a protected person.

2. The brief facts were as follows:

The victim Unaisi Naresia has been married to the accused for the past 10 years. On 24 December, 2017 at about 4am the victim was awoken by the accused shouting and trying to open the louvers of her house. To maintain peace of the neighbourhood the victim opened the door.

3. When inside the house the accused started swearing at the victim. The accused was drunk, he called the victim a "bitch" and that she was having an affair. When the accused was in the bathroom the victim ran out of the house because she was scared. The victim had run about 10 meters when the accused came and pulled her top and forcefully dragged her into the house.
4. In the house the accused punched her three (3) times on her back. After this, the victim was pulled and dragged on the floor the accused forcefully removed her panty and inserted his penis into her vagina and had sexual intercourse for about 5 minutes.
5. The victim did not consent to have sexual intercourse with the accused. After the victim had her shower the accused started forcing her to go to the Cuvu Police Post.
6. At the Police Post the victim informed the police officer that the accused had punched and swore at her. The accused lifted a chair and wanted to throw the chair at the victim. At this time he threatened the victim that he will kill her. The victim was frightened.
7. From Cuvu Police Post the victim went to Sigatoka Police Station to lodge her complaint thereafter she went for a medical examination at the Sigatoka Hospital.

8. Two weeks prior to this incident the accused was not staying with the victim as a result of the accused's swearing and threatening behaviour to kill her she was able to get a Domestic Violence Restraining Order (non-molestation) issued against the accused. The Domestic Violence Restraining Order was served on the accused which was acknowledged by him. The accused also admitted he was explained the contents of the order by WPC 4693 Akisi when the order was served on him. The complaint was investigated by the police and the accused was charged.
9. Both counsel have filed written submissions for which this court is grateful.
10. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
  - a) The accused is 40 years of age;
  - b) He was a Night Club Bouncer;
  - c) Minimal injuries caused to the victim.

#### **PREVIOUS CONVICTION**

11. The accused has six previous convictions out of which two have expired but four of them are current dated 19 January, 2016.
12. 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.  
The aggravating features are:

(a) Breach of Trust

The victim is the wife of the accused they have been married for 10 years. The accused breached the trust of the victim by his actions.

(b) Planning

The accused had gone to the house of the victim early in the morning when the neighbours were sleeping and she was alone at home. This shows some degree of planning.

(c) Vulnerability

The victim was vulnerable and innocent she had allowed the accused in the house so that the peace of the neighbourhood was not disturbed.

13. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The tariff for the rape of an adult is between 7 years to 15 years imprisonment.

14. 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.”*

15. 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.”*

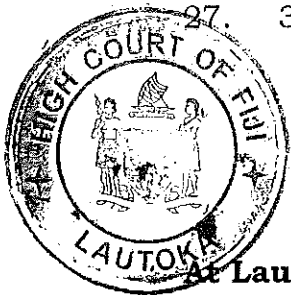
16. I am satisfied that the four offences for which the accused stands convicted are offences founded on the same facts and are of the same and/or similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the four offences.
17. It is the duty of the court to protect women from sexual violations of any kind that is the reason why the law makers have imposed life imprisonment for the offence of rape as the maximum penalty.
18. Bearing in mind the seriousness of the offences committed I take 7 years imprisonment as the starting point of your aggregate sentence. I add 3 years for the aggravating factors, bringing an interim total of 10 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value, since the

accused has previous convictions he does not receive any reduction for good character. I therefore reduce the sentence by 1 year. The aggregate sentence is now 9 years imprisonment.

19. I note the accused has been in remand for about 9 months and 15 days. I exercise my discretion to further reduce the sentence for the remand period by 10 months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served.
20. Under the aggregate sentencing regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for one count of rape, one count of assault causing actual bodily harm, criminal intimidation, and breach of domestic violence restraining order is 8 years and 2 months imprisonment.
21. 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.
22. Under section 18 (1) of the Sentencing and Penalties Act, 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.
23. Mr. Qaro, you have committed very serious offences against your wife who trusted you. In this case the victim was doing a good deed by

allowing you into her house so that you do not disturb the peace of the neighbourhood in the early hours of the morning. 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 was not imposed.

24. I am satisfied that the term of 8 years and 2 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.
25. In summary I pass an aggregate sentence of 8 years and 2 months imprisonment for the four 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.
26. Since the victim and accused are in a domestic and family relationship a permanent non-molestation and non-contact orders are issued forthwith for the protection of the victim.
27. 30 days to appeal to Court of Appeal.



At Lautoka

12 October, 2018

**Sunil Sharma**  
**Judge**

**Solicitors**

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

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