

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

**Criminal Case No.: HAC 34 of 2015**

**STATE**

**V**

**NIKOLA ROKOCIKA**

**Counsel** : Mr. S. Seruvatu with Ms. P. Lata for the State.  
: Ms. J. Singh with Mr. T. Varinava [LAC] for the  
Accused.

**Dates of Hearing** : 30 and 31 January, 2019  
**Closing Speeches** : 1 February, 2019  
**Date of Summing Up** : 1 February, 2019  
**Date of Judgment** : 4 February, 2019  
**Date of Sentence** : 22 February, 2019

---

**SENTENCE**

---

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

1. In a judgment delivered on 4 February, 2019 this court found the accused guilty and convicted him for one count of rape as per the following information:

**COUNT ONE**

**REPRESENTATIVE COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**NIKOLA ROKOCIKA** between the 1<sup>st</sup> day of May, 2014 and the 31<sup>st</sup> day of August, 2014 at Nadi, in the Western Division, penetrated the vagina of “**VR**” with his penis, without her consent.

2. The brief facts were as follows:  
The victim was 14 years of age in 2014 she lived with her stepfather the accused, her mother and three step siblings. The victim recalled three Saturdays between 1<sup>st</sup> May, 2014 and 31<sup>st</sup> August, 2014.
3. On the first occasion the victim was at home with the accused after lunch she went to wash the dishes after which she went to rest in the bedroom.
4. As she was reading the holy Bible the accused came into the bedroom and locked the door. The accused then removed the victim’s yellow skirt and panty with one hand and with the other he removed his pants. The victim tried to push the accused away, however, the accused forcefully inserted his penis on her vagina at this time the victim felt pain. The victim also felt wetness in her vagina. The accused then left the bedroom.
5. After the accused left the bedroom the victim saw blood stains on the mat and her clothes, blood had come out of her vagina. The victim further stated that she did not give her consent to the accused to have sexual intercourse with her.
6. In the afternoon the victim told her mother about what the accused had done to her.

7. On the second occasion the victim's mother had gone to catch mussels from the river, she was at home with the accused and her 4 year old step sister. The victim was in the bedroom trying to make her step sister sleep. The accused came into the room removed her skirt and panty and forcefully inserted his penis into her vagina, she felt the accused penis in her vagina.
8. The victim could not push the accused since he was strong she did not give consent to the accused to do what he had done. The accused told the victim not to tell anyone otherwise he will beat her but she told her mother about what the accused had done to her. Her mother told her not to lie and not to be cheeky.
9. On the third occasion the victim was making her step father and mother's bed when the accused came inside the room and locked the door she tried to leave the room but couldn't since the accused had the key. The accused made her lie on the bed removed her clothes and his  $\frac{3}{4}$  pants and forcefully inserted his penis into her vagina. It was painful and she did not agree to have sexual intercourse with the accused. In the afternoon the victim told her mother about what the accused had done to her, her mother beat her with a hose pipe.
10. Every Saturday the victim's mother would not be at home and she would be left with the accused and her 4 year old step sister.
11. As a result of what the accused had been doing the victim got pregnant. The matter was later reported to the police.
12. Both counsel filed their written submissions for which the court is grateful.
13. The following personal details and mitigation have been presented by the counsel for the accused:

- (a) The accused is 38 years of age but was 35 years at the time of the offending;
- (b) He is a first offender;
- (c) He is educated up to form 5;
- (d) He is a labourer;
- (e) Supports his three children.

14. I accept in accordance with 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.

15. The aggravating features are:

(a) Breach of Trust

The victim is the daughter of the accused. (Although the victim is the step daughter I have decided to use a neutral word to describe the relationship between the victim and the accused). The accused not only breached the trust of his daughter by his actions but also made a mockery of the sanctity of the relationship between a father and his daughter by his actions. The victim was naive and vulnerable the accused took advantage of this.

(b) Planning

The evidence suggests a certain degree of planning by the accused since he knew his wife would not be at home on Saturday's.

(c) Age Difference

The victim was 14 years of age and the accused was 35 years of age. The age difference of 21 years is substantial.

(d) Pregnancy

The continued sexual violation of the victim led her to become pregnant at the age of 14.

16. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in the recent judgment of *Gordon Aitcheson vs the State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.

REPRESENTATIVE COUNT

17. This court is mindful of the fact that the accused faces one representative count of rape. The evidence before the court was of more than one occasion the accused had raped the victim. The accused cannot be punished for all the three (3) occasions of rape mentioned by the victim under the representative count but for one occasion only (*see Senilokula v State, Criminal Petition No. CAV 0017 of 2017 (26 April 2018)*).
18. After assessing the objective seriousness of the offence committed I take 12 years imprisonment as the starting point of the sentence. I add 6 years for the aggravating factors, bringing an interim total of 18 years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value, however, I find his good character has substantive mitigating value. I therefore reduce the sentence by 1 year. The interim sentence is now 17 years imprisonment.
19. I note from court file that the accused was remanded for 4 months and 17 days. In exercise of my discretion I deduct 4 months and 20 days in accordance with section 24 of the Sentencing and Penalties Act as a period

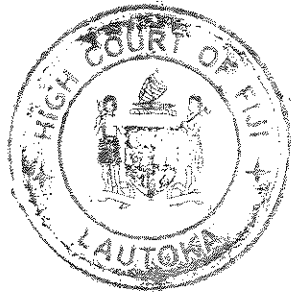
of imprisonment already served. The final sentence is 16 years 7 months and 10 days imprisonment.

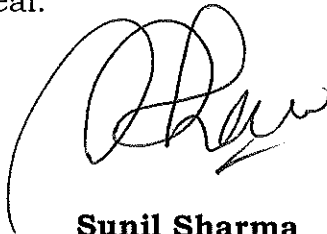
20. Mr. Rokocika you have committed a serious offence against your daughter who you were supposed to protect, care and love. You are a disgrace to the society. The victim was unsuspecting and vulnerable you cannot be forgiven for what you had done to this victim. You have not only scarred the victim's life forever but have brought shame to all the fathers and broken the sanctity of the relationship.
21. It is the duty of the court to protect children from sexual exploitation of any kind that is the reason why the law makers have imposed life imprisonment as the maximum penalty for the offence of rape.
22. There has been an increase in sexual offences involving children where the offenders are known to the victim and are matured adults. It is saddening to note the manner in which the accused had breached the trust of this victim. The victim (a child) was pregnant with a child due to the sexual lust of the accused. When the victim was to be enjoying her childhood with her peers she was living an unexpected life of being pregnant at such a young age. In the victim impact statement the victim has mentioned that she gets emotional when she thinks about what the accused had done to her.
23. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim who was his daughter of 14 years 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.
24. Under section 18 (1) of the Sentencing and Penalties Act, I impose 15 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.

25. In summary I pass a sentence of 16 years 7 months and 10 days imprisonment with a non-parole period of 15 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.

26. 30 days to appeal to the Court of Appeal.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

22 February, 2019

**Solicitors**

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

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