

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

**Criminal Case No.: HAC 46 of 2021**

**STATE**

**V**

**MOHAMMED SHIHAB HAASHMI**

<b>Counsel</b>	Ms. W. T. Elo for the State. Mr. A. Samy and Ms. R. Nair for the Accused.
<b>Dates of Hearing</b>	26 and 27 October, 2023
<b>Closing Speeches</b>	31 October, 2023
<b>Date of Judgment</b>	01 November, 2023
<b>Date of Sentence</b>	16 November, 2023

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**SENTENCE**

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

1. In a judgment delivered on 1<sup>st</sup> November, 2023 this court found the accused guilty and convicted him for one count of rape as charged.
2. The brief summary of facts were as follows:
  - a) On 17<sup>th</sup> February, 2021 at around 10 to 10:30 am the victim (21 years of age) with her friends went in the taxi of the accused to Nadi. On the

return journey the accused drove the taxi to a secluded private property in the interior of Natadola.

- b) The accused and the victim's friends consumed beer at the Wailoaloa beach and thereafter they continued drinking at Natadola. The victim did not drink, as the drinking was in progress the victim was sitting in the taxi when the accused came into the taxi and wound up all the windows. He then opened the back door and told the victim to shift inside so that he can talk with her.
  - c) The accused at first insisted that she pays the taxi fare when she said the fare had been paid the accused pushed the victim on the seat threatened her and forcefully removed her trousers and penetrated his erected penis into her vagina and had forceful sexual intercourse for about 5 minutes.
  - d) The victim did not consent to what the accused had done to her. The accused again threatened the victim not to tell any of her friends about what he had done. After the victim was dropped home she told her mother about what the accused had done to her. The matter was reported to the police the same evening. The accused was arrested, caution interviewed and charged.
3. The state counsel filed written sentence submissions and the defence counsel filed mitigation for which this court is grateful.
4. The following personal details and mitigation was submitted by the counsel for the accused:
- a) The accused was 23 years of age at the time of the offending;

- b) First offender;
  - c) Is a Taxi driver by profession;
  - d) Looks after his elderly and sickly parents, he is the only child;
  - e) Is separated from his wife;
  - f) Is the sole breadwinner of the family;
  - g) Had cooperated with police during investigation;
  - h) Seeks utmost leniency from the court.
5. 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**

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

a) Breach of Trust

The victim was a passenger in the taxi driven by the accused. The accused unknown to the victim while returning to Sigatoka from Nadi drove to a secluded spot in Natadola. In the taxi the victim had allowed the accused to seat beside her since the accused wanted to talk to her. The accused grossly breached the trust of the victim by what he did to her.

b) Victim was vulnerable

The victim was vulnerable, helpless and unsuspecting the accused took advantage of this and sexually abused the victim in his taxi. The accused had deliberately driven the car to an isolated spot at Natadola.

c) Prevalence of the offending

There has been an increase in sexual offence cases by people in control of a given situation. Here the accused was the driver of the car and he took advantage of the situation. The accused was bold and undeterred in what he did to the victim.

d) Safety of the victim

The victim was supposed to be safe in the taxi but this was not to be due to the actions of the accused.

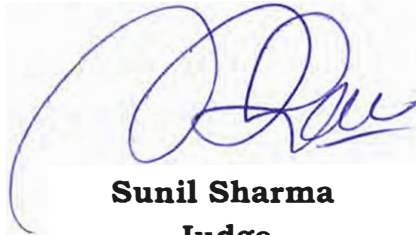
### **TARIFF**

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. 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. Although the personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive value.
10. I also note that the accused has been in remand for about 7 months and 17 days, in exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 7 months and 20 days as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 7 years, 10 months and 10 days imprisonment.
11. 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.
12. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 years and 2 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. 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.

13. Mr. Haashmi you have committed a serious offence against the victim. She was a passenger in your taxi who trusted you. 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.
14. As a public service provider you should have known better instead of protecting the victim you violated her. You have not only brought shame on yourself but also to all the hardworking public service vehicle license holders which demands an impeccable and flawless behaviour at all times. This court will be failing in its duty if a long term deterrent custodial sentence is not imposed.
15. In summary, I pass a sentence of 7 years, 10 months and 10 days imprisonment for one count of rape the accused has been convicted of with a non-parole period of 7 years and 2 months to be served before he is eligible for parole.
16. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
**Judge**



**At Lautoka**  
**16 November, 2023**

**Solicitors**

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

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