

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 278 OF 2023**

**BETWEEN** : **STATE**

**AND** : **NAFEEZ MOHAMMED**

**Counsel** : Mr J Singh for the State  
Mr S Saneem for the Accused

**Date of Hearing** : **19 October 2023, 1 December 2023, 20 December 2023**

**Date of Judgment** : **28 November 2024**

**Date of Sentence** : **20 December 2024**

**SENTENCE**

- [1] Nafeez Mohammed, you stand convicted of one count of sexual assault and three counts of rape against the same victim.
- [2] The victim is a young Dutch national in her earlier twenties who came to Fiji to work as a volunteer at her own expense for a Shark Conservation Project. Her work was at Pacific Harbour and she stayed there in an apartment with some of her colleagues who were also from abroad. She got acquainted with you after using your taxi services. You are a taxi owner and provider based in Navua.
- [3] On the evening of 16 August 2023, the victim accompanied two of her colleagues to Uprising Beach Resort for social outing. While at the Resort her colleagues invited you to join them using her phone and snapchat account. You may have got the impression that she extended the invitation to you but it was her colleagues and not her.

- [4] When you arrived at the Resort you joined the group at the Bar and later when the victim went with one of her female colleagues to the beachfront you followed them. You stayed in the company of the two women until one of them had finished smoking and decided to go back to the bar. The victim was still smoking and you remained with her until she finished and then both of you walked back to the Bar. When you went back to the Bar you realized one of the victim's flip flop was missing. The victim and one of her female colleagues accompanied you back to the beach where you found the missing shoe.
- [5] Instead of walking back to the Bar you held the victim by her waist and invited her to go for a walk on the beach. The other female colleague of the victim returned to the bar. The victim reluctantly accompanied you for a walk. She misjudged your intentions. She told the court she trusted you. As soon as you knew the victim was alone and isolated from her friends you forced yourself on her by kissing her on her lips, pushing her down, fingering her vagina with your fingers, using your tongue to penetrate her vagina and then using your penis to penetrate her vagina. You did not use any protection. She told you many times to stop but you refused to listen. She told the court it was a frightening experience for her and she endured physical pain as she was not interested in sex. You only stopped when you saw a male colleague of the victim approaching, more likely out of concern for the victim.
- [6] The victim was distraught, crying and could not face anybody. She went and locked herself in the toilet until one of the Resort's female staff approached her and found her in extreme distressed condition and bleeding from her vagina. The police was alerted and the victim was given medical attention. The examining doctor found that the victim was very distressed and physiologically traumatized. The doctor also found evidence of physical trauma, bruises inside the victim's vagina.

- [7] Your offending is on the serious end of sexual offences.
- [8] Rape is punishable by life imprisonment. The tariff for rape of an adult is between 7 to 15 years imprisonment (*Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)). The maximum penalty prescribed for sexual assault is 10 years imprisonment. The tariff for sexual assault is between 2 to 8 years imprisonment (*State v Laca - Sentence* [2012] FJHC 1414; HAC252.2011 (14 November 2012)).
- [9] You are 32 years old and married. You did not have any criminal conviction until this case. The only meaningful mitigation in your case is your previous good character.
- [10] This conviction for rape is going to taint your character for the rest of your life.
- [11] But the court must also consider the harm that rape does to the victim. Rape is not only a physical violation of the victim's body but also of her soul and mind. The impact of rape is devastating on the victim. In this case, the victim was a visitor away from her home and family when she was raped.
- [12] The Courts have said on numerous occasions that sentences for rape apart from operating as deterrence for the offender and others, must also mark the community's disapproval of sexual violence against women.
- [13] All four charges arose from the same transaction. You first kissed the victim, you then digitally penetrated her with your finger and tongue and then had sexual intercourse with her.
- [14] For the three counts of rape, I take an aggregate term of 10 years imprisonment as a starting point.

[15] I consider the following as the aggravating factors:

- The young victim was vulnerable as a visitor away from her home and family and you knew that and took advantage of her.
- The victim experienced both physical (bruises) and psychological trauma (extremely distressed) during the incident.
- There is an element of breach of trust as being a taxi proprietor, the victim was one of your customers and she trusted you as a public service transport provider.
- Lack of protection during sexual intercourse exposed the victim to pregnancy and sexually transmitted diseases.

[16] For these aggravating factors, I enhance your sentence by 3 years.

[17] I give you a discount of 1 year 11 months for your previous good character and a further 1 month for your remand period, making a total discount of 2 years.

[18] For the three counts of rape, you are sentenced to an aggregate term of 11 years imprisonment and a concurrent term of 2 years imprisonment for one count of sexual assault, making a total sentence of 11 years imprisonment with a non-parole period of 7 years.

[19] I grant the victim's request for an order for a permanent name suppression.



Hon. Mr Justice Daniel Goundar

**Solicitors:**

Office of the Director of Public Prosecutions for the State

Saneem Lawyers for the Accused