

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

HIGH COURT CRIMINALCASE NO: HAC 009 OF 2010

CRIMINAL CASE NO.: 1653 OF 2009

BETWEEN: STATE

PROSECUTION

AND: ANAND ABHAY RAJ

ACCSUED PERSON

Counsel: State - Ms. Segran J.
Accused Person - Mr Vosarogo V.

Date of Hearing: 31/07/2010, 2nd, 3rd, 4th, 8th June, 2010,

Date of Sentence: 10th June, 2010.

S E N T E N C E

After Trial the Accused was convicted of 4 counts of Rape and one count of Indecent Assault.

The facts of the case are, the accused is the step-father of the victim child. At his residence the accused raped the victim on several occasions. The victim was 10 years old when he started committing the offence and continuously raped her. Further, later when the

mother of the victim child stayed at home to look after her, still he indecently assaulted her on several occasions at home by touching her breasts and vagina. He inserted his penis into her vagina and when it was difficult to insert accused applied oil into her vagina and tried to insert the penis. Further, it was evident that he threatened to kill her and beat her if she tells the mother.

The victim in this case is a child of 10 years when she was first raped by the accused. The offence of rape of juvenile girls has become more frequent in Fiji and further rape by a family member or someone who is in a position of trust.

The victim is the step-daughter of the accused where it is a gross breach of trust. It is a serious aggravating factor. The child was continuously raped for a long period and this will surely scar her for the rest of her life and sexual offenders must be deterred from committing this kind of offences.

In case of **State v AV[2009] FJHC 24; HAC 192.2008 (21 Feb 2009)** Justice Goundar said;

“Rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assaults on children...Sexual offenders must be deterred from committing this kind of offences”.

The maximum punishment for Rape is life imprisonment. The tariff for rape of a child is between 10-14 years imprisonment (***Mutch v State Cr. App. AAU 0060/99, Mani v State, Cr. App. No. HAA 0053/021, State v Saitava, Cr. Case No. HAC 10/07, State v Tony Cr. App. No. HAA 003/08***).

On each count of Rape (Counts 1-4) I take 12 years as the starting point and add 7 years for the above aggravating factors.

The mitigating submissions were made on behalf of the accused. They are that he is 40 year old, he has a 5 year old son from the previous marriage and he was looking after his 53 year old mother. Further, it was submitted that since he was remanded his mechanical garage and properties are taken over by his brother and the neighbor and that he is remorseful.

I reduce 2 years for the mitigating factors on each count making a total of 17 years on each count of Rape (Counts 1-4). The accused is not entitled to a discount on previous good character as he has previous convictions.

I further reduce 1 year on each count of Rape considering the period of remand, making a final total of 16 years imprisonment on each count of Rape (Counts 1-4).

The maximum penalty for indecent assault is 5 years imprisonment. Sentence for indecent assault range from 12 months imprisonment to 4 years. (***Ratu Penioni Rakota v The State Criminal Appeal No. HAA 0068 of 2002S***).

Considering the above I take 3 years imprisonment as starting point on Count No. 5. I add 1 year on aggravating factors and reduce 1 year on mitigating factors making a total of 3 years imprisonment on Count No.5.

Finally the accused is sentenced as follows:

Count No.1	(Rape)	-	16 years imprisonment.
Count No.2	(Rape)	-	16 years imprisonment.
Count No.3	(Rape)	-	16 years imprisonment.

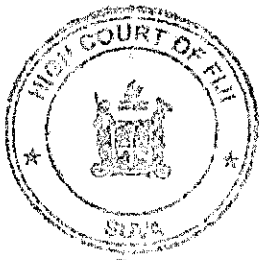
Count No.4 (Rape) - 16 years imprisonment.

Count No.5 (Indecent Assault) - 3 years imprisonment.

All sentences on Count No.1-5 are to run concurrently.

Considering the above circumstances of this case I make order that a minimum sentence of 12 years imprisonment should be served by the accused.

30 days to appeal.



A handwritten signature in black ink, appearing to read "Priyantha Fernando".

Priyantha Fernando
Puisne Judge
10th June 2010.