

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 103 of 2016

[CRIMINAL JURISDICTION]

STATE

V

PANAPASA GANITA

Counsel : Ms. K. Semisi for State  
Accused in Person

Dates of Hearing : 26 - 28 October 2016

Date of Summing up: 28 October 2016

Date of Judgment : 01 November 2016

Date of Sentence : 03 November 2016

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as EK)

SENTENCE

1. Panapasa Ganita, you stand convicted for the following offences;

FIRST COUNT

*Statement of offence*

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

*Particulars of offence*

**PANAPASA GANITA** on the 19<sup>th</sup> February 2016 at Nasinu in the Central Division had carnal knowledge of EK without her consent.

**SECOND COUNT**

*Statement of offence*

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

*Particulars of offence*

**PANAPASA GANITA** on the 26<sup>th</sup> February 2016 at Nasinu in the Central Division had carnal knowledge of EK without her consent.

**SIXTH COUNT**

*Statement of offence*

**SEXUAL ASSAULT:** Contrary to section 210(1)(a) of the Crimes Decree No. 44 of 2009.

*Particulars of offence*

**PANAPASA GANITA** on 26<sup>th</sup> February 2016 at Nasinu in the Central Division unlawfully and indecently assaulted EK by sucking her breast.

2. Victim's father is your brother. You brought the victim from Lau to your house in October 2015 to babysit your children. In February 2016, you raped her on two occasions. The victim was 19 years old when you raped her and you were 36 years old.
3. The maximum sentence for the offence of rape under section 207(1) of the Crimes Decree 2009 ("Crimes Decree") is imprisonment for life. It is settled that the sentencing tariff for rape of an adult victim is a term of imprisonment between 7 years and 15 years. (*State v Naicker* [2015] FJHC 537; HAC279.2013)

4. The offence of sexual assault under section 210(1) of the Crimes Decree carries a maximum sentence of 10 years imprisonment. Following the case of *State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012), this court has been applying an imprisonment term between 2 to 8 years as the tariff for sexual assault.

5. Section 17 of the Sentencing and Penalties Decree 2009 ("Sentencing and Penalties Decree"), reads thus;

*"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."*

6. The three offences you are convicted of form a series of offences of same or similar character. In fact you are charged for sexual assault on the sixth count for an act done during the process of committing rape on 26/02/16. Therefore, in view of the above provisions of section 17 of the Sentencing and Penalties Decree, I consider it appropriate to impose an aggregate sentence of imprisonment for the three offences.

7. I consider the following as aggravating factors;

- a) you are victim's uncle. There is a breach of trust;
- b) you raped her while she was under your care and protection. You abused your position of authority; and
- c) the age difference between you and the victim is around 16 years.

8. I consider the following as your mitigating circumstances;

- a) you are a first offender; and
- b) you cooperated with the police and during the trial process.

9. You submitted the following as your personal circumstances among others;
  - a) you were the sole breadwinner of your family;
  - b) your children are still schooling; and
  - c) your loved ones will be affected in the event you are given a custodial sentence.
  
10. The personal circumstances you have highlighted cannot be considered as mitigating factors in order to reduce your sentence. You have requested this court to consider imposing a suspended sentence in view of your personal circumstances. The nature of the offences you are convicted of does not warrant your sentence to be suspended.
  
11. I take 09 years imprisonment as the starting point of your aggregate sentence. Considering the aforementioned aggravating factors, I add 05 years. Now your sentence is 14 years imprisonment. I deduct 03 years of your sentence considering the above mitigating factors.
  
12. Accordingly, I sentence you for an imprisonment term of 11 years. Considering all the circumstances, I order that you are not eligible to be released on parole until you serve 08 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree.
  
13. Section 24 of the Sentencing and the Penalties Decree reads thus;

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
  
14. I note that you have spent 08 months in custody in relation to this case. The said period you were in custody shall be regarded as a period of imprisonment

already served by you in view of the provisions of section 24 of the Sentencing and Penalties Decree.

15. In the result, you are sentenced to 11 years imprisonment with a non-parole period of 08 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence – 10 years, 04 months

Non-parole period – 07 years, 04 months

16. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vincent S. Perera". The signature is stylized and fluid.

Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : In Person