

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 158 OF 2014

STATE

-v-

CHANDAR KANT

Counsel : **Ms. J. Fatiaki for the State**
Ms. R. Kumar with Mr. M Fesaitu and S. Hazelman for the Accused

Date of Judgment : **2nd March, 2016**

Date of Sentencing Hearing : **04th March, 2016**

Date of Sentence : **07th March, 2016**

(Name of the victim is suppressed. She is referred to as AT)

SENTENCE

[1] Mr. Chandar Kant (Accused) was found guilty after trial and was convicted by this Court on following counts. He now comes before this Court for sentence.

COUNT 1

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

CHANDAR KANT between the 1st of January 2013 and the 31st of April 2013 somewhere between Lautoka and Sigatoka in the

Western Division, unlawfully and indecently assaulted **AT** by touching her vagina.

COUNT 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

CHANDAR KANT between the 1st of January 2013 and the 31st of April 2013 somewhere between Lautoka and Sigatoka in the Western Division, unlawfully and indecently assaulted **AT** by making her sit on top of his lap whereby she felt his erected penis on her backside.

COUNT 3

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

CHANDAR KANT between the 1st of January 2013 and the 31st of April 2013 at Sigatoka in the Western Division, penetrated the vagina of **AT**, a 9 year 5 months old girl, by inserting his finger into her vagina.

[2] The facts of the case in brief were that:

Accused is 51 years old and married. He is a bus driver. Victim was in the custody of the accused and his wife at Lomolomo during the period of incidents. One morning, the Accused took the victim with him to Sigatoka in his bus while he was transporting people attending a church conference. On the way to pick up the passengers accused made the victim sit on his lap and unzipped his pants so that she could feel his naked penis on her backside.

When they reached Sigatoka, and after the passengers got off from the bus accused started to touch her body and touched her private part. Then he tried to poke her vagina with his hand. She demonstrated the way he touched. He warned her not to tell anyone and if he did he will 'murder her'. The doctor who examined her several months after the incidents found her hymen not intact and vaginal wall abnormally soft, consistent with penetration with a blunt object.

Sentence for Rape

Maximum Sentence

- [3] The maximum penalty for Rape is life imprisonment.

Tariff for Rape

- [4] It is now well settled, and confirmed by the Supreme Court in **Anand Abhay Raj** CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment.

Starting Point

- [5] Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders.
- [6] **In State v. AV** [2009] FJHC 24; HAC 192 21.02.2009 it was stated that:

"rape is the most serious form of sexual assault... Society cannot condone any form of sexual assault on children...Sexual offenders

- [7] Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

[8] In the case of **Mohammed Kasim v. State** [1994] FJCA 25;AAU 0021j.93S (27 May 1994) it was stated that;

"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 that starting point". (emphasis is mine)

[9] In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Justice Paul Madigan stated that:

" Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."

[10] I identify the offence of Rape as the head count and the sentence for Rape will therefore become the foundation in reaching the overall punishment.

[11] Having considered the gravity of the offence, I pick eleven (11) years' imprisonment as the starting point for Rape count.

Aggravating Circumstances

[12] The age gap between them is nearly forty years. In principle, the younger the child and the greater the age gap between the offender and the victim, the higher the sentence should be.

[13] The Accused was the guardian of the victim at the time of the offending. Victim's mother handed over the custody of the victim in

the belief that her daughter will be safe and secure in the care of the accused. He breached that trust and exploited her vulnerability.

[14] Accused used his authority over her and instilled fear in the victim to cover up the offending.

[15] According to the Victim Impact Statement filed, victim has suffered physically and psychologically. She lost her virginity at very young age. Offending left a scar and trauma for the rest of her life.

[16] Accused pleaded not guilty to the charge and maintained that position right throughout the trial. By doing so, he has not saved the young girl from giving evidence and reliving the ordeal. He has thereby not shown remorse and repentance.

Mitigating Circumstances

[17] Accused cooperated with police.

[18] He is first offender and has maintained a clear record.

Sentence for Rape Count

[19] I add three (3) years to the starting point for above mentioned aggravating factors bringing the interim sentence to fourteen (14) years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence for Rape count to thirteen years' imprisonment.

[20] Accused was in remand for a period of nearly two months. Thus a period of two (2) months is deducted from the sentence. Now the final sentence for Rape count is twelve (12) years and ten (10) months.

Sentence for Indecent Assault Count

[21] The maximum penalty for Indecent Assault is 5 years imprisonment. Tariff range for Indecent Assault is between 12 months and 4 years imprisonment. (**Ratu Penioni Rakota v The State** Criminal Appeal No. HAA 0068 of 2002S). **State v Gonedau** FJHC 84 (5 March 2013).

[22] For these assaults, I impose a sentence of 2 years' imprisonment for each count.

[23] All the prison terms to be served concurrently with the prison term imposed on Rape count.

[24] Considering Section 18 (1) of the Sentencing and Penalties Decree non parole period of nine (09) years is imposed.

Summary

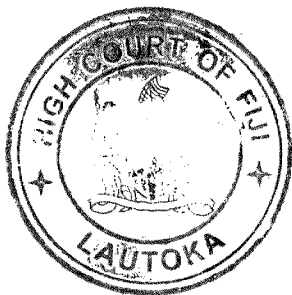
[25] Count No.1 (Indecent Assault)- 2 years' imprisonment

Count No.2 (Indecent Assault) -2 years' imprisonment


Count No.3 (Rape) twelve (12)- years and ten (10) months' imprisonment.

[26] All sentences on Counts 1-3 are to run concurrently. Accused, Mr. Chandar Kant will serve a minimum of nine (09) years before being eligible for parole.

[27] 30 days to appeal to the Fiji Court of Appeal.



**At Lautoka
07th March, 2016**


**Aruna Aluthge
Judge**

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Legal Aid Commission for Accused**