

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 90 of 2014

STATE

v.

AVITESH RAM

Counsel: Ms. S. Lodhia & Mr. E. Samisoni for State  
Ms. L. Raisua for Accused

Dates of Hearing: 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> February 2016

Date of Summing Up: 25<sup>th</sup> February 2016

Date of Judgment: 26<sup>th</sup> February 2016

Date of Sentence: 8<sup>th</sup> March 2016

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**SENTENCE**

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1. Avitesh Ram, you stand convicted of one count of Indecent Assault and one count of Rape.
2. Brief facts of the case are that the complainant Josephine Ashwin Chand was staying at your house on 15/03/2013. You came home late in the night. Complainant was sleeping in the bedroom. You went to the bedroom, touched her breasts, chest and her private part and also poked your fingers into her vagina for which she did not agree. She

shouted and no one came for help. Your mother then came, swore at the complainant and also pushed you back on to her. Following morning the complainant informed her grandmother and then her mother.

3. The complainant was 16 years old at the time of the offence and you were 27 years old.
4. Maximum punishment prescribed for the offence of Indecent Assault is 5 years imprisonment.
5. Tariff for Indecent Assault is 12 months imprisonment to 4 years. (**Rokota v. State** Criminal Appeal No. HAA0068 of 2002; Shameem J in Rokota case said:

*“From these cases a number of principles emerge. Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.*

*These are the general principles which affect sentencing under section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in particularly serious cases, a five year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault of a non-penetrative and fleeting type.*

*Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than these."*

6. For the offence of Indecent Assault in Count No. 1, taking into account the gravity of the offence, I take 12 months as the starting point.

**Aggravating factors**

7. It was evident that when the complainant's mother chased her out of the house, with the help of your mother the complainant made a report to the police and your mother undertook to look after the complainant in your house. Complainant would have expected you to look after her as your sister. However, you breached that trust reposed on you. Also, the complainant opted to stay at your house as she had no place to go when her mother chased her away. You took advantage of the vulnerability of the complainant. A contents of the Victim Impact Statement is also taken into account.

**Mitigating factors**

8. You are now 30 years old, unmarried. You are a first offender. I also take into consideration that you fell sick after your conviction and you were admitted to CWM hospital and being treated.
9. I add 18 months for the aggravating factors and deduct 1 year for the mitigating factors. Now your sentence for Indecent Assault in Count No. 1 is 18 months imprisonment.
10. The offence of Rape carries a maximum penalty of life imprisonment.

11. Tariff for Rape of a Juvenile is 10 – 16 years of imprisonment. (Raj v. State [2014] FJSC 12; CAV003.2014 (20 August 2014). The aggravating factors and mitigating factors will be the same as mentioned before.
12. For the offence of Rape in Count No. 2, I take 10 years as the starting point. I add 18 months for the aggravating factors and deduct 1 year for the mitigating factors.
13. Now your sentence is 10 years 6 months. You have been in remand since 13/10/2015 to date. Therefore I deduct 5 months for your period in remand. Now your final sentence for Rape in Count No. 2 is 10 years and 1 month. Your non- parole period will be 7 years.
14. Your final sentence is:

For Indecent Assault in Count No. 1 - 18 months imprisonment.

For Rape in Count No. 2 - 10 years and 1 month imprisonment.

Both sentences in Count No. 1 and 2 are to run concurrently. Your non-parole period will be 7 years.



Priyantha Fernando  
Judge

At Suva

8<sup>th</sup> March 2016

Solicitors

Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused.