

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 236 OF 2014S

STATE

vs

MOHAMMED RIYASAT ALI

Counsels : **Ms. D. Kumar and Ms. M. Konrote for the State**
Mr. N. Nand and Mr. P. Kumar for the Accused

Hearings : **22 and 23 March, 2016**

Summing Up : **24 March, 2016**

Judgment : **24 March, 2016**

Sentence : **1 April, 2016**

SENTENCE

1. In a judgment delivered on 24 March 2016, the court found you guilty and convicted you on the following counts:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MOHAMMED RIYASAT ALI on the 7th of August 2014 at Nakasi, Nasinu in the Central Division penetrated the anus of **AK** by inserting his finger into the said **AK's** anus.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

MOHAMMED RIYASAT ALI between 29th July 2014 and 8th August 2014 at Nakasi, Nasinu in the Central Division, unlawfully and indecently assaulted **AK** by touching his penis.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

MOHAMMED RIYASAT ALI on the 7th of August 2014 at Nakasi, Nasinu in the Central Division penetrated the anus of **JK** by inserting his finger into the said **JK's** anus.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

MOHAMMED RIYASAT ALI on the 7th of August 2014 at Nakasi, Nasinu in the Central Division, unlawfully and indecently assaulted **JK** by touching his penis.

SIXTH COUNT

Statement of Offence

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

Particulars of Offence

MOHAMMED RIYASAT ALI between the 29th of July 2014 and the 8th of August 2014 at Nakasi, Nasinu in the Central Division, unlawfully and indecently assaulted **MK** by touching his penis.

2. The brief facts were as follows. Between 29 July and 8 August 2014, you went from Ba to Nakasi to renovate your brother-in-law's (DW2) house. DW2 was preparing for his daughter's wedding on 8 August 2014. Because of the wedding, DW2's house and compound was a hive of activities. Relatives and friends were always at DW2's house and compound preparing for the wedding.
3. You, a carpenter by profession, was, at the time, renovating DW2's house. The three male child complainants came into contact with you at DW2's house and compound because they were DW2's family and relatives. They came with their relatives to prepare for DW2's daughter's wedding. It was during this time that you raped complainant no. 1 (PW2) and complainant no. 2 (PW3), by inserting your finger into their anus. Then you unlawfully and indecently assaulted PW2, PW3 and complainant no. 3 (PW1) by touching their penis at different times.
4. We will start with the rape offences (count no. 1 and 4) because they are the most serious offences. "Rape" carries a maximum penalty of life imprisonment (section 207 (1) of the Crimes Decree 2009). The tariff for the rape of a juvenile is now a sentence between 10 to 16 years imprisonment: see **Anand Abhay Raj v The State**, Criminal Appeal Case No. CAV 0003 of 2014, Supreme Court of Fiji. The actual sentence will depend on the aggravating and mitigating factors.
5. "Sexual assault" carries a maximum sentence of 10 years imprisonment (section 210 (1) of the Crimes Decree 2009). The tariff for the offence is a sentence between 2 to 8 years imprisonment, with serious offences attracting the higher end of the scale, while the minor offences will attract the lower end of the scale: see **State v Ratabacacalaca**, Criminal Case No. HAC 252 of 2011S, High Court, Suva.
6. The aggravating factors in this case were as follows:
 - (i) *Serious Breach of Trust*: The accused, aged 50 years old at the time, was the three child complainants' uncle. As such he was supposed to look after and care for the complainants, who were aged between 8 and 11 years old at the time. All the complainants were children at the material time and the accused, as an uncle, was supposed to supervise and look after them carefully. Instead he abused them by poking two of them in the anus (rape) and by indecently touching their penis (sexual

assault). The abuse of children must stop, and those who continue to do the same will have to accept a custodial sentence to teach them a lesson;

(ii) By offending against the child complainants, the accused had no regard whatsoever to their rights as human being and their rights to personal safety;

(iii) *Rape and sexual abuse of children*: This offence is becoming prevalent in our society and a custodial sentence is required as a deterrence and a warning to would-be offenders.

7. The mitigating factors were as follows:

(i) At the age of 50 years, this was the accused's first offence;

(ii) The accused had been remanded in custody for approximately 2 months, at the beginning and end of the trial;

8. On count no. 1 (rape), I start with a sentence of 10 years imprisonment. For the aggravating factors, I add 3 years, making a total of 13 years imprisonment. For the time already served while remanded in custody, I deduct 2 months, leaving a balance of 12 years 10 months. For being a first offender, I deduct 2 years 10 months, leaving a balance of 10 years imprisonment. On count no. 1 (rape), I sentence you to 10 years imprisonment.

9. I repeat the above process and sentence for count no. 4 (rape).

10. On count no. 2 (sexual assault), I start with a sentence of 3 years imprisonment. For the aggravating factors, I add 2 years, making a total of 5 years imprisonment. For the mitigating factors, I deduct 3 years, leaving a balance of 2 years imprisonment. On count no. 2 (sexual assault), I sentence you to 2 years imprisonment.

11. I repeat the above process and sentence for count no. 5 and 6.

12. In summary, your sentences are as follows:

(i)	Count no. 1	:	Rape	:	10 years imprisonment
(ii)	Count no. 2	:	Sexual Assault	:	2 years imprisonment
(iii)	Count no. 4	:	Rape	:	10 years imprisonment

- (iv) Count no. 5 : Sexual Assault : 2 years imprisonment
(v) Count no. 6 : Sexual Assault : 2 years imprisonment

13. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, a final total sentence of 10 years imprisonment.
14. Mr. Mohammed Riyasat Ali, for sexually abusing the three child complainants, at Nakasi in the Central Division, between 29 July and 8 August 2014, I sentence you to 10 years imprisonment, with a non-parole period of 8 years imprisonment, effective forthwith.
15. The names of three child complainants are permanently suppressed to protect their privacy.




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JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva.
Solicitor for Accused : Nand's Law, Barrister and Solicitor, Suva.