

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 170 OF 2015S

STATE

vs

KAMLESH LAL

Counsel : Mr. Y. Prasad and Ms. S. Serukai for State
Ms. M. Tarai for Accused
Hearings : 20 and 21 April, 2016
Summing Up : 22 April, 2016
Judgment : 25 April, 2016
Sentence : 26 April, 2016

SENTENCE

1. In a judgment delivered on 25 April 2016, the court found the accused guilty and convicted him on the following counts in the following information:

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

KAMLESH LAL on the 17th day of April, 2015 at Nausori in the Central Division, had carnal knowledge of **L. K.**, without her consent.

SECOND COUNT

Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to Section 209 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KAMLESH LAL on the 17th day of April, 2015 at Nausori in the Central Division, assaulted **L. K.** with intent to commit rape.

2. The brief facts were as follows. The complainant and the accused previously lived together as husband and wife, and had two young children together. On 17 April 2015, they were separated and were living separate lives. While shopping in Nausori Town on 17 April 2015, the accused with the aid of two men, forcefully grabbed the complainant and threw her into a taxi. The taxi was driven by the accused.
3. The accused and the two men repeatedly slapped the complainant in the taxi. They blind folded her and tied her hands and legs together. At a nearby junction, the two men got off, and the accused drove the complainant to his home. At his home, the accused untied the complainant and repeatedly punched her stomach, ribs and chest. Then he repeatedly raped her. He continued to assault her, while raping her. She suffered injuries as a result. The matter was reported to police and he was subsequently prosecuted.
4. Count No. 1 involved the offence of rape. Rape is a serious offence. The maximum sentence is life imprisonment. For adults, the tariff is a sentence between 7 to 15 years imprisonment: see **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Bera Yalimawai v The State**, Criminal Appeal No. AAU 0033 of 2003, Fiji Court of Appeal; **Navuniani Koroi v The State**, Criminal Appeal No. AAU 0037 of 2002, Fiji Court of Appeal and **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The actual sentence will depend on the mitigating and aggravating factors.

5. Count No. 2 involved the offence of "assault with intent to commit rape". The maximum sentence is 10 years imprisonment.

6. The aggravating factors in this case were as follows:

(i) By offending against the complainant, the accused had shown utter disregard to her right as a human being and her right not to be harmed;

(ii) He had not treated the mother of his children with dignity. In fact, he had abused the trust she previously had for him;

(iii) The accused's offending against the complainant was vicious and mean and he had no regard to her right to live a peaceful and harmonious life.

7. The mitigating factor was as follows:

(i) The accused had been remanded in custody since 21 April 2015, that is, about 1 year 5 days ago.

8. On Count No. 1 (rape), I start with 12 years imprisonment. I add 3 years 5 days for the aggravating factors, making a total 15 years 5 days. For time already served while remanded in custody, I deduct 1 year 5 days, leaving a balance of 14 years imprisonment. On Count No. 1, I sentence you to 14 years imprisonment.

9. On Count No. 2, I sentence you to 3 years imprisonment.

10. The summary of your sentences are as follows:

(i)	Count No. 1	:	Rape	:	14 years imprisonment
(ii)	Count No. 2	:	Assault with intent to commit Rape]	3 years imprisonment

11. Because of the totality principle of sentencing, I direct the above sentence to be concurrent to each other, that is, a final total sentence of 14 years imprisonment.

12. Mr. Kamlesh Lal, for offending against the complainant, I sentence you to 14 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith.

13. The name of the complainant is suppressed permanently, to protect her privacy.



A handwritten signature in blue ink, consisting of a large, stylized 'S' shape.

Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Nausori
Solicitor for Accused : Legal Aid Commission, Nausori.