

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 271 OF 2014

STATE

V

SANDEEP NARAYAN DASS

Counsel : Ms. S. Lodhia and Ms. S. Tivao for State
Ms. T. Kean for the Accused

Dates of Hearing : 20 - 22 June 2016

Date of Summing Up : 22 June 2016

Date of Judgment : 23 June 2016

Date of Sentence : 23 June 2016

(The name of the complainant is suppressed. The complainant will be referred to as AS)

SENTENCE

1. Sandeep Narayan Dass, you stand convicted of the following offences;

FIRST COUNT

Statement of offence

Rape: Contrary to Section 207 (1) & (2)(b) & (3) of the Crimes Decree No. 44 of 2009.

Particulars of offence

SANDEEP NARAYAN DASS on the 5th of July 2014 at Nasinu in the Central division penetrated the vagina of AS a child under the age of 13 years by inserting his fingers into the vagina of the said AS.

SECOND COUNT
[Representative Count]
Statement of offence

Sexual Assault: Contrary to Section 210(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of offence (b)

SANDEEP NARAYAN DASS between the 1st of July 2012 to the 14th of July 2014 at Nasinu in the Central Division, unlawfully and indecently assaulted AS by playing with his penis in front of the said AS before ejaculating onto her.

THIRD COUNT
Statement of offence

Assault Causing Actual Bodily Harm: Contrary to Section 275 of the Crimes Decree No. 44 of 2009.

Particulars of offence (b)

SANDEEP NARAYAN DASS on the 15th of July 2014 at Nasinu in the Central Division assaulted AS thereby causing the said AS actual bodily harm.

2. You pleaded guilty for the third count on 16/12/14. After trial you were found guilty of the first and second counts.
3. In brief, in the month of July 2014, you removed the cloths of the victim who is your step daughter who was 8 years old, took off your cloths and got on top of her on the bed. Then you raped her by inserting your finger inside her vulva. Further, during the period between 01/07/12 and 14/07/14, you forcefully entered the bathroom while the victim was having a bath, took off your cloths and you masturbated and ejaculated on her genital area. Thereafter, you ejaculated on her body on several occasions during the above period. You assaulted the victim with a belt and a spoon on 15/07/14 to make her read where she sustained injuries on her left eyelid, right forearm and her back.
4. The maximum sentence for the offence of rape under section 207(1) of the Crimes Decree 2009 ("Crimes Decree") is imprisonment for life and the sentencing tariff for rape of a child is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12; CAV 003 of 2014).

5. 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.
6. The offence of assault causing actual bodily harm under section 275 of the Crimes Decree carries a maximum sentence of 5 years imprisonment. The accepted tariff for this offence is an absolute or conditional discharge to 12 months imprisonment. (*State v Salote Tugalala* HAC 025/2008)
7. Rape and sexual assault are offences of similar character. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Decree 2009 (“Sentencing and Penalties Decree”), I consider it appropriate to impose an aggregate sentence of imprisonment for the first and the second counts. Section 17 of the 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.”

8. I consider the following as aggravating factors;
 - a) you are victim’s stepfather. There was a breach of trust;
 - b) age gap between you and the victim is 16 years; and
 - c) you took advantage of the victims vulnerability.
9. Your counsel submits the following as your mitigating circumstances;
 - a) you are 26 years old;
 - b) you support your elderly father, your wife and 7 months old child; and
 - c) you are sympathetic to your acts and asks for forgiveness.

10. As revealed during the trial, you assaulted both the complainant and the second prosecution witness on 15/07/14. Your counsel submits that you have been charged separately for assaulting the said second prosecution witness in the Nasinu Magistrates Court and was sentenced to 4 months imprisonment suspended for 24 months. Unfortunately, the prosecution submits that this conviction still does not appear in their records. However, I will not consider the aforementioned conviction in determining your sentence in this case for the reasons submitted by your counsel and you will be considered as a person without previous convictions in addition to the above mitigating factors.
11. I take 11 years imprisonment as the starting point of your aggregate sentence for the first and the second counts. Considering the aforementioned aggravating factors, I add 4 years. Now your sentence is 15 years imprisonment.
12. I deduct 3 years of your sentence considering the above mitigating factors.
13. For the first and the second counts, I hereby sentence you for an imprisonment term of 12 years. I order that you are not eligible to be released on parole until you serve 09 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.
14. Considering all circumstances relating to the third count I impose a sentence of 4 months imprisonment.
15. Both sentences to be served concurrently.
16. 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.”

17. I note that you have spent 1 month and 07 days in remand before you were granted bail and you spent 01 day in remand pending your sentence. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 1 month and 08 days.
18. In the result, you are sentenced to 12 years imprisonment with a non-parole period of 09 years. Considering the time spent in remand, the time remaining to be served is as follows;
- Head Sentence – 11 years, 10 months and 22 days
Non-parole period – 08 years, 10 months and 22 days
19. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera
JUDGE

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