

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

CRIMINAL CASE NO: HAC. 288 of 2014

STATE

V

JAGDISHWAR SINGH

Counsel : Ms. M. Chowdhury for State
Ms. M. Tarai for Accused

Date of Sentencing : 29th July 2016

SENTENCE

1. Jagdishwar Singh, upon pleading guilty, you stand convicted for the following offences;

COUNT 2

Statement of offence

Rape: Contrary to section 207 (1) and 2(c) and (3) of the Crimes Decree, No. 44 of 2009.

Particulars of offence

JAGDISHWAR SINGH on the 11th day of October, 2014 at Vuci South, Nausori in the Central Division, penetrated the mouth of Gaura Dasi, a child under the age of 13 years, with his penis.

COUNT 3

Statement of offence

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

Particulars of offence

JAGDISHWAR SINGH on the 11th day of October, 2014 at Vuci South, Nausori in the Central Division, unlawfully and indecently assaulted Gaura Dasi.

2. The facts of this case according to the summary of facts are as follows;

“Rape contrary to section 207(1) and (2)(c) and (3) of the Crimes Decree.

On the 11th day of October 2014, Gaura Dasi, a child under the age of 13, (hereafter PW1) was sleeping at her home. PW1’s home was located at Vuci South, Nausori. On the said night, PW1 was sleeping with the accused, Jagdishwar Singh (hereafter “the Accused”) who is her biological father.

The accused on the said night, woke her up and took her to the washroom. After going to the washroom, the accused then took PW1 back to the bedroom. The accused put his penis into the PW1’s mouth and told her to suck it.

Sexual Assault contrary to section 210 (1)(a) of the Crimes Decree No. 44 of 2009.

On the 11th day of October 2014, the Accused unlawfully and indecently assaulted PW1 by rubbing his penis on PW1’s thighs.

The Accused told PW1 not to tell her mother about his actions or else she would smack PW1.”

3. 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).

4. 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.
5. 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 in respect of the two offences. 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."
6. I select 11 years as the starting point of your aggregate sentence.
7. I consider the following as aggravating factors in this case;
 - a) you are the victim's father; there is a breach of trust;
 - b) the age gap between you and the victim is 25 years; and
 - c) you took advantage of the victim's vulnerability and naivety.
8. I consider the following as mitigating factors;
 - a) you are a first offender and you are 31 years old;
 - b) you co-operated with the police; and

c) you are remorseful.

9. You have made admissions regarding the two offences in your cautioned interview. You were initially represented by a private counsel and you pleaded not guilty to the charges. You retained the services of the Legal Aid Commission on 30/03/16 and on the next mention date, your counsel informed that you wish to plead guilty for the two counts you are now convicted of. You pleaded guilty well before the trial date and prevented the child victim from having to relate to her miserable experience before this court. In the circumstances, though you have not pleaded guilty on the first available opportunity, I consider it appropriate to give you a considerable reduction.
10. Considering the aforementioned aggravating factors, I increase your sentence by 5 years.
11. Considering the above mitigating factors, I deduct 4 years. Now your sentence is 12 years.
12. In view of your relatively early guilty plea, I deduct 2 years and 6 months.
13. Accordingly, I sentence you to an imprisonment term of 9 years and 6 months. I order that you are not eligible to be released on parole until you serve 08 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.
14. 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."

15. I note that you have spent 1 year 09 months and 07 days in remand. 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.
16. In the result, you are sentenced to an imprisonment term of 9 years and 6 months with a non-parole period of 08 years. Considering the time spent in remand, the time remaining to be served is as follows;
- Head Sentence - 07 years, 08 months and 23 days
- Non-parole period - 06 years, 02 months and 23 days
17. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

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