

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 129 OF 2012

STATE

-v-

RAM CHARAN MAHARAJ

Counsel: Ms. L. Latu for State
Mr. W. Nainima for Accused

Date of Conviction : 29th August, 2016

Date of Sentence : 31st August, 2106

SENTENCE

[1] On the 29th day of August, 2016, Mr. **Ram Charan Maharaj** (Accused) was convicted on following counts.

1ST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.

Particulars of Offence

RAM CHARAN MAHARAJ, on the 3rd day of October 2012 at Ba in the Western Division, inserted his penis into the vagina of **VIRISILA MARAMA** without her consent.

2ND COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

RAM CHARAN MAHARAJ on the 9th day of October 2012 at Ba in the Western Division, unlawfully and indecently assaulted a girl namely **VIRISILA MARAMA** by touching her body whilst she slept.

- [2] The Victim was 17 years old student at the time of the incidents. She is from a broken family. Accused is her stepfather. The Victim was living with her grandparents in Rakiraki while her mother and step father lived with their children in Ba. The Victim had come to visit her mother in Ba. On the 3rd day of October, 2012, her mother and stepfather had a fight. Her mother chased the Victim away from the house because she suspected of a relationship between the Accused and the Victim.
- [3] Having packed up the bag of cloths to go to Rakiraki, the Victim went to have a wash. When she came back from the washroom, her bag had gone missing. Accused did not want her to leave the house. The Victim's step sister told her that her bag was taken by the Accused. Then the Victim went to the nearby farm house with her step sister in search of the bag. Accused also came to the farm house in the evening. Upon his arrival, the Victim inquired about the bag but did not get a response. The Victim then wanted to come back to the main house to get the bag. But the Accused discouraged her. Then she decided to remain in the farm house.
- [4] Without the bag she could not go to Rakiraki. She could not go to the main house because she feared that her mother will do something to her. The Victim was placed in a vulnerable situation in the farm house. It is under these circumstances that the Victim was raped by her stepfather.
- [5] When the Victim was on the bed, Accused forcefully took off her *sulu* and the panty. Then he tied her hands and legs and inserted his penis into her vagina. He threatened her with a knife and warned her not tell anything to her mother.

[6] On the 9th of October, 2012 the Victim was in Rakiraki at her grandfather's place. Early in the morning, while she was still sleeping, she could feel someone touching her. When she woke up, she saw Accused touching her. She removed his hand. Her mother noticed it and eventually, both incidents were reported to police.

[7] Maximum penalty for Rape is life imprisonment.

[8] It is now well settled, and confirmed by the Supreme Court in Anand Abhay Raj CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment.

[9] In Raj (*supra*), the appellant sought leave to appeal against a sentence of 16 years with a non-parole period of 12 years for the offence of 'Rape' of his step-daughter. In dismissing the application (unanimously), the Justice Madigan stated the following at paragraph [18]:

"Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years".

[10] Supreme Court upheld the judgment of the Court of Appeal, and at paragraph [66] the Chief Justice Anthony Gates endorsed the remarks of the Justice Madigan mentioned above.

Starting Point

[11] Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders. In State v Tauvoli [2011] FJHC 216; HAC027.2011 (18 April 2011) Madigan J observed:

"Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound".

[12] In State v AV [2009] FJHC 24; HAC 192 21.02.2009 it was stated that:

"rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assault on children...Sexual offenders"

[13] Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

[14] In the case of Mohammed Kasim v State [1994] FJCA 25; AAU 0021j.93S (27 May 1994) it was stated that;

“It must be recognized by the Courts that the crime of Rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point”.

[15] In Raj (*supra*), the accused was the step father of the victim and their age difference was approximately 28 years. The victim was subjected to rape on four occasions over a period of just over 1 year. The victim was 10 years old at the time of the first offending. The Learned Sentencing Judge had selected a starting point of 12 years for each of the 4 representative counts.

[16] The circumstances of offending in the present case are slightly different from those in Raj (*supra*). In this case the Victim was 17 years and the age difference between the two here was approximately 10 years. He committed the offence only once on his stepdaughter. There is no evidence of preplanning.

[17] I consider the Rape charge to be the head count for the purpose of sentencing. Having considered the gravity of the offence, culpability of the offending and its impact on the victim, I pick eleven (11) years as the starting point for the Rape charge.

[18] The maximum sentence for Indecent Assault is 5 years' imprisonment.

In Rokota v The State [2002] FJHC 168; HAA0068J.2002S (23 August 2002) Justice Shameem observed:

“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”.

Aggravating Circumstances

- [19] The Victim is from a broken family. When the Victim was chased away by her mother, she was in a vulnerable situation. The Accused exploited her vulnerability.
- [20] The Accused is the stepfather of the Victim. It is this relationship of trust that is the strongest aggravating factor against the Accused. He took advantage of the trust that the Victim had placed and he breached that trust.
- [21] Accused used his authority over the Victim and used violence to instill fear in her. He also frightened her to prevent the incident being reported to anybody.
- [22] The Accused committed these offences in a domestic environment. He has perpetrated violence on the Victim violating the Domestic Violence Decree.
- [23] According to the Victim Impact Statement filed, victim has suffered physically and psychologically. Offending left a scar and trauma for the rest of her life.

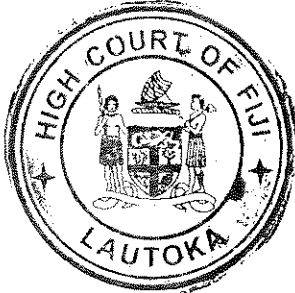
Mitigating Circumstances


- [24] According to the mitigation submission, Accused is 30 years old sole breadwinner of his family with seven children. He was earning \$ 200 fortnightly as a sugarcane farmer. The children have stopped schooling due to social stigma and economic hardships after the Accused was taken into custody.
- [25] The Accused has two previous convictions traced back to more than ten years. Therefore, I consider him to be a first offender. He has maintained a clear record over the past 10 years.

Sentence

- [26] I add four years to the above stated starting point for aggravating factors bringing the interim sentence to fifteen years' imprisonment for the 1st count of Rape. I deduct two years for mitigating factors bringing his sentence down to thirteen years' imprisonment.
- [27] According to the report filed by the State, Accused had spent approximately 6 months in remand. Having considered the time he had spent in remand, period of six months is deducted from his sentence pursuant to Section 24 of the Sentencing and Penalties Decree. Now his final sentence for the first count of Rape is 12 years and 6 months' imprisonment.
- [28] For the Second count of Indecent Assault, I impose a sentence of 12 months' imprisonment.
- [29] Considering the 'totality' and 'one transaction' principles, I order the sentences to be served concurrently.

- [30] Considering Section 18 (1) of the Sentencing and Penalties Decree, his youth, number of children he is having and his willingness to rehabilitate, I impose a non-parole period of nine years.
- [31]. A Domestic Violence Restraining Order is issued against the Accused with a Non-Molestation Order.
- [32] 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

At Lautoka
31st August, 2016

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Accused