

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 009 OF 2016LAB

STATE

V

SADDAM FIDA HUSSAIN

Counsels : Mr. R. Kumar for State
Mr. A. Sen for Accused

Hearings : 24 and 25 July, 2017

Summing Up : 26 July, 2017

Judgment : 27 July, 2017

Sentence : 28 July, 2017

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

COUNT 1

STATEMENT OF OFFENCE

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

PARTICULARS OF OFFENCE

SADDAM FIDA HUSSAIN, on the 26th day of February 2016, at Tabia in the Northern Division, unlawfully and indecently assaulted **SHAGUFTA SHAZNA BANO**, by touching her breast.

COUNT 2

STATEMENT OF OFFENCE

RAPE: Contrary to section 207 (1) and (2)(b) of the Crimes Act 2009.

PARTICULARS OF OFFENCE

SADDAM FIDA HUSSAIN, on the 26th day of February 2016, at Tabia in the Northern Division, penetrated the vagina of **SHAGUFTA SHAZNA BANO**, with his finger, without her consent.

2. The brief facts were as follows. On 26 February 2016, after 5pm, the complainant (PW1) was having a shower in her family's bathroom. The accused went into the bathroom without PW1's consent. He stood behind her, gagged her mouth with one hand and with the other hand, touched the complainant's right breast. He later touched her vagina and poked the same with his finger. PW1's hymen was torn as a result. The matter was reported to police and the accused was charged with sexual assault and rape.
3. In State v Katokaiti Tutara, Criminal Case No. HAC 050 of 2014LAB. High Court, Labasa, I said the following, "...Rape" as a sexual offence, is at the top of the criminal calendar, as far as sexual offences were concerned. It involved an attack on a person's dignity. It is also an attack on a person's right to privacy. It intrudes into a person's right to enjoy a quality life. Those who find themselves on the wrong side of the law must not expect leniency. The law makers of this country had prescribed a maximum sentence of life imprisonment for those found guilty of rape (see section 207 (1) of the Crimes Decree 2009). The Honourable Chief Justice via the Supreme Court

case of Anand Abay Raj vs The State, Criminal Appeal Case No. CAV 0003 of 2014, had set the tariff for the rape of juveniles a sentence between 10 to 16 years imprisonment. The actual sentence will depend on the mitigating and aggravating factors”.

4. “Sexual Assaults” carried a maximum sentence of 10 years imprisonment (section 210 (1) of the Crimes Act 2009).
5. The aggravating factors in this case were as follows:
 - (i) Breach of Trust. The complainant (PW1) was your cousin sister. Of all people, you are supposed to protect her. She is related to you. Your father and her father are brothers. Yet, despite the above, you abused her trust by committing the offences against her.
 - (ii) By offending against the complainant, you showed no regard to her right not to be harmed and to be secure. You did not respect her right to be left alone and did not respect her dignity.
 - (iii) You obviously planned to sneak into the bathroom while she was having a shower, and then sexually assault and raped her. You should not complain when your liberty is taken to pay for your crime.
6. The mitigating factors were as follows:
 - (i) At the age of 23 years old, this is your first offence;
 - (ii) You had been remanded in custody for 2 weeks.
7. On the “rape” charge (count no. 2), I start with a sentence of 10 years imprisonment. I add 1 year for the aggravating factors, making a total of 11 years imprisonment. I deduct 1 month for time already served, while remanded in custody, leaving a balance of 10 years 11 months. I deduct 1 year 11 months for being a first offender, leaving a balance of 9 years imprisonment.
8. On the “sexual assault” charge (count no. 1), I sentence you to 6 months imprisonment.
9. The summary of your sentences are as follows:

(i)	Count No. 1	-	Sexual Assault	:	6 months imprisonment.
(ii)	Count No. 2	-	Rape	:	9 years imprisonment.
10. Because of the totality principle of sentencing, I direct that the above sentence be made concurrent to each other, making a final total sentence of 9 years imprisonment.

11. Mr. Saddam Fida Hussain, for sexually assaulting and raping the complainant on 26 February 2016 at Tabia Labasa in the Northern Division, I sentence you to 9 years imprisonment, with a non-parole period of 6 years imprisonment, effective forthwith.
12. You have 30 days to appeal to the Court of Appeal.


Salesi Temo
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Maqbool & Company, Labasa**