

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 016 OF 2013**

STATE

v

SAJNEEL RITESH RAO

Counsel: Ms. S. Kiran for State  
Mr. D.S. Naidu with Mr. J. Prakash for Accused

Date of Judgment: 04<sup>th</sup> April, 2018

Date of Sentence: 20<sup>th</sup> April, 2018

**SENTENCE**

1. Mr. SAJNEEL RITESH RAO, you were convicted on following counts after a fully defended trial.

**First Count**

*Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

SAJNEEL RITESH RAO alias ASHNEEL on the 16th day of January, 2013, at Nadi in the Western Division, unlawfully and indecently placed his hands on the breasts of KARTIKA NAIR, without her consent.

## Second Count

### *Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

### *Particulars of Offence*

**SAJNEEL RITESH RAO** alias **ASHNEEL** on the 16th day of January, 2013, at Nadi in the Western Division, inserted his finger into the vagina of **KARTIKA NAIR**, without her consent.

2. Upon your conviction, you now come before this Court for sentence.
3. The facts of the case were that, on the 16<sup>th</sup> of January, 2013, Complainant's husband, left home for work at about 7.30 a.m. Complainant was lying down on her bed after cooking. You came to her room and sat beside her. Then you told her that you want to kiss her and suddenly put your hands on her back. Complainant asked you to leave the room but you were still sitting there. When she tried to get up, you pushed her down on the mattress. Then you put your both hands on her breast and pressed her down. You stretched her dress and pushed your fingers in her vagina without her consent. She felt the pain because she was three months pregnant. When she slapped you, you left the room and told her not to tell anything what happened to anyone.
4. The maximum penalty for Sexual Assault is 10 years' imprisonment. In *State v Epeli Ratabacaca Laca*, HAC 252 of 2011, Madigan J set the tariff for the offence between 2 and 8 years imprisonment, the higher tariff being set for serious sexual assaults.
5. Considering the Legal Guidelines for Sentencing in the United Kingdom, Madigan J, in Laca (supra), divided Sexual Assault offending into three (3) categories on the basis of the culpability factor and the harm factor.

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

## Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

## Category 3

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

6. Touching of the breast falls into category 3 above.
7. The maximum penalty for Rape is life imprisonment.
8. The tariff for rape of an adult is well settled. The starting point is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021j of 1993S) and the tariff is set between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
9. Rape is the most serious crime in your offending. Therefore, in reaching the final sentence, I consider the rape count as the head count and base your sentence on that count. This heinous crime is prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. Not only the offender but potential offenders must be deterred. The offender must be severely punished to ensure safety and security of all women.
10. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
11. In selecting the starting point, the Court must have regard to the objective seriousness of the offence. In doing so, I have considered the culpability and the

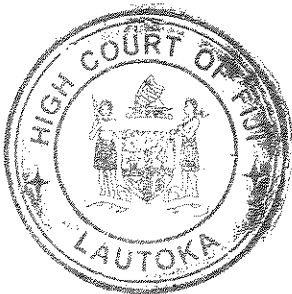
harm factors of your offending. You have used a degree of force and exploited a vulnerable woman who was alone at home when her husband left for work. Having considered the gravity and objective seriousness of the offence, and principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 7 years' imprisonment as the starting point for the 2<sup>nd</sup> count of rape.

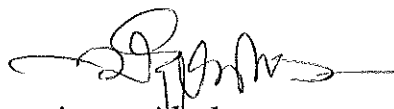
12. I have considered following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in *Ram v State* [2015] 26; CAV 12.2015 (23 October 2015).
  - i. Victim and her husband came to reside at the house placing much trust on you as a friend. You breached that trust when you committed these offences.
  - ii. You chose to satisfy your lustful demands without having any regard to the Complainant who was pregnant at that time.
  
13. I have considered following mitigating circumstances that your Counsel has submitted to this Court.
  - i. You are a 29 year old young offender. You are married and the sole breadwinner of your family. You are employed as a tour driver and you look after your nephews and nieces. I have considered your personal circumstances although they have a very little mitigatory value.
  - ii. You are a first offender.
  - iii. The character references filed by your Counsel show that you have maintained a good character not only at your work place but also within your community. You have come forward to help the needy people during turbulent times.
  - iv. This offence was committed in 2013 and the charge was hanging over your head for the past 5 years. The delay was not due to your fault, and over the past five years, feeling of anxiety or stress as to the future was possibly rife. With the uncertainty of the outcome, you have suffered. The court is mindful of that.

- v. You seek mercy and forgiveness of the court.
  - vi. You have cooperated with police.
14. I add 2 year to the starting point for above mentioned aggravating factors and deduct 2 year for the above mentioned mitigating factors bringing the sentence to one of 7 years' imprisonment. According to the submission filed by the State Counsel, you had been in remand approximately for 40 days. I deduct further 40 days to reflect your remand period. Now your final sentence for the 2<sup>nd</sup> count is 6 years 10 months and 20 days' imprisonment.
  15. For the 1<sup>st</sup> count (Sexual Assault), I select a starting point of 2 years. I add 1 year for the aforementioned aggravating factors and deduct 1 year for mitigation. Your sentence for the 1<sup>st</sup> count is 2 years' imprisonment.
  16. You are a young and first offender. I have considered your rehabilitation potential in determining your non-parole period. Considering Section 18 (1) of the Sentencing and Penalties Act, and principles enunciated in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non-parole period of 5 years.

**Summary**

17. 1<sup>st</sup> Count- 2 years' imprisonment  
2<sup>nd</sup> Count 6 years 10 months and 20 days' imprisonment
18. Having considered one transaction and totality principles, I order that you serve both sentences concurrently.
19. **You are sentenced to 6 years 10 months and 20 days' imprisonment. You are eligible for parole after serving 5 years in prison.**
20. 30 days to appeal to the Fiji Court of Appeal.



  
**Aruna Aluthge**  
**Judge**

**At Lautoka**  
**20<sup>th</sup> April, 2018**

**Counsel:**

- **Office of the Director of Public Prosecution for State**
- **Messrs Pillai, Naidu & Associates for Defence**