

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 137 OF 2017

BETWEEN : STATE

AND : NACANIELI NATADRA

Counsel : Mr. J. Niudamu for State
Ms. S. Khan with Mr. T. Kaloulasulasu for the Accused

Date of Hearing : 13th and 14th of May, 2019

Date of Closing Submissions : 14th of May, 2019

Date of Summing Up : 15th of May, 2019

Date of Judgment : 15th of May, 2019

Date of Sentence : 17th of May, 2019

SENTENCE

1. Mr. Nacanieli Natadra, you stand convicted for one count of Abduction of Young Person, contrary to Section 285 of the Crimes Act, which carries a maximum penalty of five (5) years imprisonment, one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, which carries a maximum penalty of ten (10) years imprisonment and one count of Rape, contrary to section 207 (1) (2) (b) of the Crimes Act, which carries a maximum penalty of life imprisonment.
2. It was proved during the course of the hearing, that you have forcefully pulled the complainant into your vehicle and then tied up her hands and legs. You then took her to a location, where no one was present, where you have indecently licked her vagina and then inserted your tongue into her vagina without her consent. The complainant was seventeen years old at the

time when this offence took place. The complainant was attending school and was living with her parents and siblings.

3. Sexual exploitation of a young person is one of the most humiliating and distressing crimes. It not only violates the physical self of a person, but also destroys the personal dignity and self-autonomy of a person. Therefore, any form of sexual exploitation is a serious offence.
4. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the society denounce such crimes without any reservation.
5. Justice Hamza in State v Kumar - Sentence [2018] FJHC 215; HAC199.2017 (21 March 2018) found the applicable tariff to the offence of Abduction of Young Person is between twelve (12) months to three (3) years imprisonment, depending on violence, length of detention, use of weapons *etc.*
6. Hon. Former Chief Justice Gates in Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that the tariff to rape of a child is between 11 -20 years' imprisonment period. The tariff that was in force for the offence of rape in 2017 ranges from ten (10) years to sixteen (16) years. (Anand Abhay Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014).)
7. Justice Madigan in State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012) has expounded the tariff to the offence of Sexual Assault as between two (2) years to eight (8) years' imprisonment.
8. All of these three counts are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.

9. According to the victim impact report, the complainant has been going through an adverse emotional and psychological trauma due to this incident. Her life style has adversely changed after this incident. Therefore, I find the level of harm is substantially high in this offending.
10. You have abducted the complainant while she was walking to the shop alone. You came behind her and grabbed her when she was not in a position to escape or ask for any assistance. You have then threw her into the vehicle and tied her hands and legs. You then started to lick her vagina and then inserted your tongue into her vagina while her hands were still tied up. After the incident you have pushed her out from the vehicle. Accordingly, I find that you have found an opportunity to commit this crime when the complainant was in a vulnerable position and then committed the crime using substantial amount of physical and emotional violence. Therefore, I find the level of culpability is substantially high in the matter.
11. The complainant was seventeen years old at the time of this offence took place. You were 52 years old at that time. Therefore, the age difference between you and the complainant is substantial high. I find it as an aggravating factor.
12. The learned counsel for the defence in her mitigation submissions discussed about your family and personal circumstances, which has no much mitigatory values.
13. You are a first offender. The learned counsel submitted in her mitigation submissions about your contribution to the community. Hence, you are entitled for a substantive discount for your previous character.
14. Having taken into consideration the above discussed reasons, I sentence you for a period of fifteen (15) years of imprisonment as an aggregate sentence to these three counts as charged.
15. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find thirteen (13) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


Head Sentence

16. Accordingly, I sentence you for a period of **Fifteen (15) years** imprisonment as an aggregate sentence to the offence of Abduction of Young Person, Sexual Assault and Rape as charged. Moreover, you are not entitled to any parole for a period of **thirteen (13) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

17. You have been in remand custody for this case for a period of nearly twenty six (26) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) month as a period of imprisonment that have already been served by you.
18. Accordingly, the actual sentencing period is **fourteen (14) years and eleven (11) months** imprisonment with non-parole period of **twelve (12) years and eleven (11) months**.
19. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
17th of May, 2019

Solicitors : Office of the Director of Public Prosecutions
Iqbal Khan & Associates