

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 81 of 2018

STATE

vs.

MR

Counsel: Ms. S. Swastika for the State
Mr. K. Cheng for Accused

Date of Hearing: 18th, 20th, 23rd and 27th September 2019

Date of Closing Submission: 30th September 2019

Date of Summing Up: 01st October 2019

Date of Judgment: 03rd October 2019

Date of Sentence: 04th October 2019

SENTENCE

1. **Mr. MR**, you stand convicted to one count of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment, one count of Sexual Assault, contrary to Section 210 (1) (b) (i) and (2) of the Crimes Act, which carries a maximum penalty of ten (10) years imprisonment and one count of Abduction of Young Persons, contrary to Section 285 of the Crimes Act, which carries a maximum penalty of five (5) years imprisonment.

2. On the morning of the 25th of January 2018, you came in a car bearing the registration number JG 192 when the complainant was waiting for the school bus to go to school. You then offered to drop the complainant to her school. Once she got into your car, instead of taking her to the school, you took her to a secluded location. You then forced her to touch your penis with her hands. You then penetrated into her vagina with your fingers. The complainant was twelve years old at the time when this offence took place. She was attending school and was living with her grandmother.
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 eleven (11) to twenty (20) years' imprisonment period. The tariff that was in force for the offence of rape of a child in January 2018 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 outlined the tariff for 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 is going through an adverse emotional and psychological trauma due to this incident. Her life style has adversely changed after this incident. It has adversely affected her life making her a withdrawn and isolated personality. Therefore, I find the level of harm is substantially high in this offending.
10. You abducted the complainant while she was waiting for the school bus in order to go to school in the morning of 25th of January 2018. You then took her to a secluded location and locked her inside the car. She had no prospect of escaping or asking for any assistance. You have punched on her thighs heavily when she tried to prevent you putting your hands in between her thighs. After the incident you drove your car towards the complainant in order to run over her, which she managed to escape by jumping out of the road. Accordingly, I find this is an opportunistic crime, committed on the complainant by using substantial amount of physical and emotional violence. Therefore, I find the level of culpability is substantially high in this matter.
11. Having taken into consideration the seriousness of the offence, the purpose of the sentence, and the level of harm and culpability, I find this is an appropriate case to fix a higher starting point. I accordingly select fourteen (14) years as the starting point.
12. The complainant was twelve (12) years old at the time of this offence took place. You were twenty seven (27) years old at that time. Therefore, the age difference between you and the complainant is substantial high. The complainant trusted you when you offered her a lift to

the school. However, you breached that trust by committing this heinous crime on her without any remorse. I find these factors as aggravating factors in this offending.

13. The learned counsel for the defence in his mitigation submissions discussed about your family and personal circumstances, which has no much mitigatory values.
14. You are a first offender. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. Therefore, you are only entitled for a meager discount for your previous character.
15. In view of the reasons discussed above, I increase further three (3) years for the aggravating factors to reach interim period of seventeen (17) years. In view of your previous character, I reduce one (1) year to reach a period of sixteen (16) years imprisonment as your final sentence.
16. Having considered the seriousness of this crime, the level of culpability and harm, the purpose of this sentence, your age and opportunities for rehabilitation, I find fourteen (14) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

17. Accordingly, I sentence you for a period of **Sixteen (16) years** imprisonment as an aggregate sentence to the offence of Rape, Sexual Assault and Abduction of Young Person as charged in the information. Moreover, you are not entitled to any parole for a period of **fourteen (14) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

18. You have been in remand custody for this case for a period of nearly one (1) year and eight (8) months 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) year and nine (9) months as a period of imprisonment that have already been served by you.
19. Accordingly, the actual sentencing period is **fourteen (14) years and three (3) months** imprisonment with non-parole period of **twelve (12) years and three (3) months**.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

04th October 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.