

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 56 of 2019**

**STATE**

**vs.**

**SHIU CHAND**

**Counsel:** Mr. S. Sharma for the State  
Mr. SP. Gosaiy for Accused

**Date of Hearing:** 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> February 2020

**Date of Closing Submission:** 14<sup>th</sup> February 2020

**Date of Summing Up:** 18<sup>th</sup> February 2020

**Date of Judgment:** 19<sup>th</sup> February 2020

**Date of Sentence:** 04<sup>th</sup> March 2020

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**SENTENCE**

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1. The court found the accused, Mr. Shiu Chand, guilty of two counts of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and two counts of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act and convicted of the same accordingly.
2. The prosecution proved the accused had picked the complainant in his car on the early morning of the 18th of January 2019. He then took her to his house. On his way, he had

slapped the complainant on her chin. At his home, the accused had tried to have sexual intercourse with her, which she refused. He had then assaulted her by punching on her face and head. Afterward, the accused took the complainant to the car and forced her to lean on the back seat. After that, the accused kissed her lips and breast. Subsequently, he had forcefully penetrated the vagina of the complainant with his finger and then tongue. Afterward, the accused penetrated the vagina of the complainant with his penis without her consent.

3. Rape 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, Rape is a serious offence.
4. I now turn my attention to consider the purpose of this sentence. The main purpose of this sentence is 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.
5. The tariff to the offence of Rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period. Period of 2 years to 8 years imprisonment is the tariff for the sexual assault. The tariff for the offence of Assault Causing Actual Bodily harm ranges from a suspended sentence to 9 months imprisonment.
6. All of the six counts are founded on the same series of offending of the same and similar characters. Therefore, the court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
7. You picked the complainant, pretending that you were going to drop her back home. You found an opportunity when the complainant walked out of the house after an argument with her husband. Therefore, this is an opportunistic crime. The victim impact report states the complainant is experiencing adverse emotional and psychological effects due to this crime.

Her life as a wife and a mother has changed since then. Given these reasons, I find the level of culpability and harm in these offences are significantly high.

8. You have breached the trust that the complainant and her family had in you. They invited you to their home to have a drinking session. On your way to your house, and also in the bedroom, you forced the complainant to drink more beer. You knew she had been consuming liquor since the previous evening. She was vulnerable after her arguments with her husband. The complainant was upset as she failed to save her sister from the assault of the sister's husband. You manipulatively used this vulnerability of the complainant to unleash your sexual and physical assault on her. I find these facts as aggravating factors.
9. The learned Counsel for the defence submitted your personal and family background, which I do not find any mitigatory value.
10. Section 4 (2) (i) of the Sentencing and Penalties Act states that the sentencing court must consider the previous character of the offender. Section 5 of the Sentencing and Penalties Act has provided the factors that the court could take into consideration in determining the previous character of the offender, where it states that:

*"In determining the character of an offender a court may consider (amongst other matters)-*

- i) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions recorded against the offender;*
- ii) the general reputation of the offender; and*
- iii) any significant contributions made by the offender to the community, or any part of it.*

11. There is no evidence or information before this court to consider your general reputation in society and also no evidence about any significant contribution that you have made to the

community. The mitigation submissions merely states that you are an active member of the temple. You have one previous conviction. In view of these factors, I give you a meager discount to your previous character.

12. Having taken into consideration the above-discussed reasons, I sentence you to a period of twelve (12) years imprisonment as an aggregate sentence to all of these six counts.
13. Having considered the seriousness of this crime, the purpose of this sentence, and your age, I find ten (10) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for ten (10) years under Section 18 (1) of the Sentencing and Penalties Act.

#### **Head Sentence**


14. Accordingly, I sentence you to a period of twelve (12) years imprisonment as an aggregate sentence to two counts of Rape, contrary to Section 207 (1) and (2)(b) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and two counts of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act. Moreover, you are not entitled to any parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### **Actual Period of the Sentence**

15. You have been in remand custody for this case for nearly twenty-six (26) days. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider one (1) month as a period of imprisonment that has already been served by you.
16. Accordingly, the actual sentencing period is eleven (11) years and eleven (11) months imprisonment with a non-parole period of nine (9) years and eleven (11) months.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

**At Suva**

04<sup>th</sup> March 2020

**Solicitors**

Office of the Director of Public Prosecutions for the State.  
Jitendra Reddy Lawyers for the Defence.