

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 88 OF 2016

BETWEEN : **STATE**

AND : **ARUN KUMAR**

Counsel : *Ms. P. Lata for the State*
Mr. I. Khan with Mr. T. Kaloulasulasu for the Accused

Hearing on : *14th & 15th of September 2020*

Summing up on : *17th of September 2020*

Judgment on : *29th of September 2020*

Sentence on : *20th of October 2020*

(The name of the victim is suppressed and will be referred to as K.R, PW1 or the complainant.)

SENTENCE

1. Mr. Arun Kumar, you have been found guilty and convicted of two counts of 'Rape'.
2. You pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant K.R, her mother and Dr. Toyin Jenko gave evidence for the prosecution while the accused gave evidence and called a witness Mr. Munesh

Reddy, on his behalf. After the summing up, the three assessors unanimously found the accused not guilty to the alleged two counts of Rape. This court having reviewed the evidence, disagreed with the opinion of the Assessors and found you guilty and convicted you of the said counts.

3. It was proved during the trial that, you being in a relationship with the mother of K.R for a long time, you were trusted by the K.R. to be her real Papa. But you instead of protecting her, preyed upon her, for your own lustful desires.
4. The offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

5. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into

account during the sentencing process. I have duly considered these factors in determining the aggregate sentence to be imposed on you.

6. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
7. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

8. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

9. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

10. It is apparent the present accepted tariff for the Rape of a child below the age of 13 years is 11 to 20 years of imprisonment as for **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018). It is admitted by the parties that K.R was only 08 years old at the time of the committal of the offences.
11. In consideration of the fact that this is an aggregate sentence, as well as the above tariff, I will commence your sentence at 12 years of imprisonment.
12. The aggravating factors are as follows:
 - (i) This was a serious and abhorrent crime.
 - (ii) There was gross abuse and breach of trust.
 - (iii) The accused was victim’s mothers’ partner.
 - (iv) The impact of the crime on the victim was traumatic.
13. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 2 years. Now your aggregate sentence is 14 years of imprisonment.

14. Your counsel has indicated that you have no previous convictions or any pending cases and has maintained a clean character. You are said to be remorseful. In consideration of all the mitigating factors I will deduct 2 years. Therefore your final sentence is 12 years of imprisonment.
15. Accordingly, I sentence you to a term of imprisonment of 12 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, and having duly considered all the relevant factors, I order that you are not eligible to be released on parole until you serve 9 years of that sentence.
16. Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

17. You were arrested on the 26th of April 2016. You were in remand till granted bail on the 04th of May 2016. Thereafter, you were convicted by this court on the 29th of September 2020 and is in remand since then. Altogether, you have been in custody for a period of 1 month. I will deduct a month in lieu of that as the period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of a month should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

18. In result, you are sentenced to a term of imprisonment of 12 years with a non-parole period of 09 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 11 years and 11 months.
Non-parole period - 08 years and 11 months.

19. You have 30 days to appeal to the Court of Appeal if you desire so.



Chamath S. Morais

JUDGE

At Lautoka

20th October 2020

Solicitors for the State : *Office of the Director of Public Prosecutions*

Solicitors for the Accused : *Messrs. I. Khan & Associates, Lautoka*