

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 022 of 2019

STATE

V

NIRBHAI CHAND

Counsel: Mr Tuenuku for the State
Mr Dayal for the Accused

Date of Hearing: 04 and 05 January, 2021

Date of Summing Up: 06 January, 2021

Date of Judgment: 07 January, 2021

Date of Sentence: 13 January, 2021

SENTENCE

1. The Court found Mr. Nirbhai Chand guilty of two counts of Indecently Annoying Any Person, contrary to section 213 (1) (a) of the Crimes Act, which carries a maximum punishment of one-year imprisonment, one count of Indecent Assault, contrary to Section 212 (1) of the Crimes Act, which carries a maximum penalty of five years imprisonment, one count of Sexual Assault, contrary to Section 210 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment and one count of Rape, contrary to Section

207 (1) and (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment.
The particulars of the offences are that:

Count One

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: *Contrary to section 213 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

NIRBHAI CHAND, between 01st day of July 2014 and the 31st day of July, 2014 at Yasiyasi, Tavua in the Western Division, with intent to insult the modesty of ASHA ANSHU LATA, uttered the words “***hamar saathe karo tub hum hamar baby rok dega***”, meaning in English, “***sleep with me and have sex so that you can conceive a baby***”, intending that such words be heard by the said ASHNA ANSHU LATA.

Count Two

Statement of Offence

INDECENT ASSAULT: *Contrary to section 212 (1) of the Crimes Act 2009.*

Particulars of Offence

NIRBHAI CHAND, between 01st day of July 2014 and the 31st day of July, 2014 at Yasiyasi, Tavua in the Western Division, unlawfully and indecently assaulted ASHNA ANSHU LATA by touching her breast.

Count Three

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: *Contrary to section 213 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

NIRBHAI CHAND, between 01st day of July 2014 and the 31st day of July, 2014 at Yasiyasi, Tavua in the Western Division, with intent to insult the modesty of ASHA ANSHU LATA, uttered the words “*pana kolo mangata tumme dakhe bina kapda ke*”, meaning in English, “*open the door I want to see how you look without clothes*”, intending that such words be heard by the said ASHNA ANSHU LATA.

Count Four

Statement of Offence

SEXUAL ASSAULT: *Contrary to section 210 (1) of the Crimes Act 2009.*

Particulars of Offence

NIRBHAI CHAND, between 01st day of May 2015 and the 31st day of September, 2015 at Yasiyasi, Tavua in the Western Division, unlawfully and indecently assaulted ASHNA ANSHU LATA by fondling her breast.

Count Five

Statement of Offence

RAPE: *Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.*

Particulars of Offence

NIRBHAI CHAND, between 01st day of May 2015 and the 31st day of September, 2015 at Yasiyasi, Tavua in the Western Division, had carnal knowledge ASHNA ANSHU LATA without her consent.

2. Offences of sexual nature are one of the humiliating and distressing crimes. It violates the physical self of a person and destroys the personal dignity and self-autonomy of a person. Therefore, such offences are serious offences.

3. 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 Court's responsibility to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature.
4. 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. Tariff for the Indecent Assault is a sentence between 1 to 4 years imprisonment.
5. All five 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.
6. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. Her lifestyle, both personal and social, has changed adversely after this incident. According to the Victim Impact Report, this crime has shattered her self-confidence, making her scared. It has unsettled her marriage life. Therefore, I find the level of harm in these offences is significantly high.
7. You had meticulously planned and executed this crime. You had assaulted the Complainant when she was alone at home and had no prospect of escape or seek assistance. You had tried to conceal these crimes by scaring her that her husband would leave her if she tells someone. You knew that her parents had abandoned her after her marriage. She had no place to go. You have manipulatively used her vulnerability to satisfy your lustful sexual gratification. I accordingly find that the level of culpability is significantly high in this crime.
8. Having considered the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, I select eight (08) years as the starting point.

9. The Complainant is your daughter-in-law. She explained in her evidence that she considered you as her father, but no longer she feels the same. You had abused that trust and confidence she had in you as her father-in-law. By doing this crime, you have destroyed the family of your son and his wife, the Complainant. The age difference between you and the Complainant is significant. I consider these reasons as aggravating factors of this offence.
10. The learned Counsel for the Defence, in his mitigation submissions, submitted your personal and family background, which I find no mitigatory value. You are not a first offender; hence, you are not entitled to any discount for your previous good character. I consider your poor health condition as a mitigation factor.
11. In view of the reasons discussed above, I increase three (3) years for the aggravating factors to reach an interim period of eleven (11) years. Because of your poor health condition, I give you one (1) year discount and reach ten (10) years imprisonment as your final sentence.
12. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find eight (08) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for eight (08) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
13. You had been granted bail on the day you were produced in the Magistrate's Court. Hence, I do not find any reason to act under Section 24 of the Sentencing and Penalties Act.
14. Accordingly, I sentence you for **ten (10) years** imprisonment as an aggregate sentence for these five counts as charged in the information. Moreover, you are not entitled to any parole for **eight (08) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.
15. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a Permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic

Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competence Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of Section 77 of the Domestic Violence Act.

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



R. D. R. T. Rajasinghe
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State.

Messrs. Dayals Lawyers for the Accused.