

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

**Crim. Case No: HAC 170 of 2015**

**STATE**

vs.

**KAMLESH LAL**

**Counsel:** Ms. J. Fatiaki with Mr. J. Singh for the State  
Ms. S.Ratu with Ms. K. Maharaj for Accused

**Date of Hearing:** 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> April 2022

**Date of Closing Submission:** 25<sup>th</sup> April 2022

**Date of Judgment:** 17<sup>th</sup> June 2022

**Date of Sentence:** 22<sup>nd</sup> June 2022

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**SENTENCE**

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1. The Court found you guilty of one count of Assault with Intent to Commit Rape, contrary to Section 209 of the Crimes Act and one Count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Act and convicted to the same accordingly.
2. It was proved during the hearing that you had forcefully taken the Complainant to your house on the 17th of April 2015 and then assaulted her intending to rape her. You had then penetrated the vagina of the Complainant without her consent with your penis. You and the Complainant had been in a *de-facto* relationship for over a decade and have two sons from

that relationship. However, the Complainant separated from you and had a new partner in her life in April 2015.

3. Rape is one of the most humiliating and distressing crimes. It violates the physical self of a person and destroys the personal dignity and self-autonomy of a person. Therefore, Rape is a serious offence.
4. The primary purpose of this sentence is founded on the principle of deterrence. It is the 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 maximum sentence for Rape is life imprisonment. The tariff for the offence of Rape involving an adult victim ranges from seven (07) years to fifteen (15) years of imprisonment period. The maximum sentence for Assault with Intent to Commit Rape is ten years imprisonment.
6. Both of these offences are founded on the same series of offences. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
7. The Complainant was your former *de-facto* partner and mother of your two sons. She was raising your two sons by herself when this incident took place. The Court had the opportunity to observe the Complainant while she gave evidence in Court. The Complainant was emotional and struggled to retain her focus while giving her evidence. It is apparent from her demeanour that she does not want to recall or revisit those traumatic memories. The victim impact report details the extent of the emotional and psychological effect this offence has caused the Complainant. It has adversely changed the Complainant into a withdrawn, scared person. In view of these facts, I find the level of harm in this offence is significantly high.

8. You had forcefully pulled her to your car with the help of two others. I am mindful that the assault is subsumed in the offence of Assault with Intent to Commit Rape. However, the Court is allowed to take into consideration the nature, the extent and the gravity of the assault in determining the level of culpability. You had used a knife to threaten her and then assaulted her on her back with the blunt side of the knife. Considering these facts, I find the level of culpability in this offence is exceedingly high.
9. Considering the serious nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select 12 years as the starting point.
10. You have breached the trust that the Complainant had in you as the father of her children. You tried falsely implicating her boyfriend in assault and raping in order to conceal your crime. You had aggressively attempted to implement your above heinous plot at the Health Centre. I consider these grounds as aggravating factors in this offence.
11. The learned Counsel for the Defence, in her mitigation submissions, submitted your personal and family background, which I do not find any mitigatory value.
12. You are not a first offender. However, the Court finds that your previous convictions were recorded before 2007. Additionally, 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. Considering these reasons, I find that you are entitled to a meager discount for your previous character.
13. In view of the reasons discussed above, I increase further three (3) years for the aggravating factors to reach fifteen (15) years. Because of your previous character, I reduce one (01) year. Accordingly, I reach fourteen (14) years imprisonment as your final sentence.
14. Having considered the seriousness of this crime, the purpose of this sentence, your age and the opportunity for rehabilitation, I find twelve (12) years of the non-parole period would



serve the purpose of this sentence. Hence, you are not eligible for parole for twelve (12) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Head Sentence


15. Accordingly, I sentence you to **fourteen (14) years** imprisonment as an aggregate sentence for the offence of Assault with Intent to Commit Rape, contrary to Section 209 of the Crimes Act and Rape contrary to Section 207 (1) (2) (a) of the Crimes Act. Moreover, you are not entitled to any parole for a period of **twelve (12) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Actual Period of the Sentence

16. You had been in remand custody for this case for nearly one (1) year and four (04) days before the conclusion of the previous trial. You had then spent five (5) years and ten (10) months and twenty-one (21) days in prison serving a sentence imposed on you during the previous trial. Accordingly, you had spent six (6) years and eleven (11) months and twenty-six (26) days in remand and prison. Accordingly, I consider seven (7) years as a period of imprisonment you have already served.
17. Accordingly, the actual sentencing period is **seven (07) years** imprisonment with a non-parole period of **five (05) years**.
18. 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 Permanent Domestic Violence Restraining Order against you with standard non-molestation 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 competent Court is varied or suspends it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.

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



  
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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

22<sup>nd</sup> June 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.