

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 033 OF 2020

BETWEEN : STATE

AND : SAJINESH CHAND

Counsel : Ms S Shameem & Ms N Ali for the State
Ms T Kean & Ms R Chand for the Accused

Date of Hearing : 20 - 21 June 2022

Date of Judgment : 1 July 2022

Date of Sentence : 6 July 2022

SENTENCE

- [1] Following a trial, the offender was convicted of two counts of rape against his stepdaughter.
- [2] The facts are as follows.
- [3] The victim was born on 29 December 2005. She was very young when her biological parents separated. Her mother had her custody. When her mother started a relationship with the offender she accompanied her mother to live with the offender at Omkar Road. The offender at the time worked as a casual carpenter. They lived in a basic two bedroom house.
- [4] The first incident occurred in 2018 when the victim was 12 years old and was in primary school. Her account is that the offender sneaked into her bedroom at nighttime when her mother was fast asleep in the other room, gagged her mouth

with a pillow to stop her from raising alarm, forcefully removed her undergarments and had sexual intercourse with her. He threatened to kill her if she reported to anyone.

- [5] The second incident was a representative count. That incident occurred in 2019 when the victim was 13 years old and her mother had gone out to visit some relatives. The offender sneaked into the victim's bedroom, gagged her mouth with a pillow, forcefully removed her undergarments and had sexual intercourse with her. When she went to clean herself in the bathroom she noticed that she was bleeding from her genitalia. She did not report to her mother because she was scared of the offender.
- [6] The abuse was exposed when a female relative of the victim questioned her why she did not have her menses for over a month.
- [7] The offender is now 40 years old and divorced. He has a 4 year old child who is being looked after by the offender's former partner.
- [8] The only mitigating factor is that the offender is a first time offender. He has not expressed any remorse to deserve credit in sentence.
- [9] The aggravating factors are that the child victim was vulnerable due to her circumstances, and the age gap between her and the offender was vast. She was gagged with a pillow to prevent her from raising alarm and she was threatened from reporting the sexual abuse. Rape was repeated within one year when the victim was 13 years old. She experienced both physical pain and psychological trauma. Being the victim's stepfather, he grossly breached the victim's trust.
- [10] The maximum penalty prescribed for rape is life imprisonment.
- [11] In *Raj v State* [2014] FJSC 12 Crim. App. CAV0003 of 2014, 20 August 2014, the Supreme Court observed that:

Rape is the most serious form of sexual assault... Society cannot condone any form of sexual assault on children... Sexual offenders must be deterred from committing this kind of offences.

[12] In ***Aitcheson v State*** [2018] FJSC 29; CAV0012.2018 (2 November 2018) the Supreme Court set the following tariff:

[24] The increasing prevalence of these crimes, crimes characterized by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

[25] The tariff previously set in ***Raj v The State*** [2014] FJSC 12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms. (per Gates CJ)

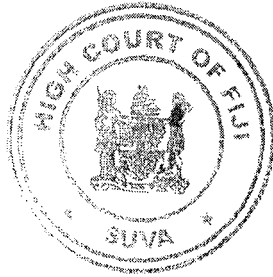
[13] I consider an aggregate sentence is appropriate to reflect the offender's total criminality. I pick 11 years imprisonment as a starting point, add 7 years to reflect the aggravating factors and deduct 2 years to reflect the offender's previous good character.

[14] The offender is sentenced to 16 years' imprisonment for the two counts of rape against his stepdaughter.

[15] He has already served 5 months in custody on remand.

[16] The remaining sentence for him to serve is 15 years, 7 months' imprisonment with a non-parole period of 11 years, 7 months.

[17] The interim DVRO with standard no contact and non-molestation conditions and the victim's name suppression is made permanent.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused