

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 75/2020

STATE

vs.

DANIEL SINGH

Counsels:

Mr. Baleilevuka K and Mr. Singh J	-	for Prosecution
Mr. Dharmendra Kumar	-	for Defendant

Date of Judgment: 05.10.22

Date of Sentence: 20.10.22

SENTENCE

1. Mr. Daniel Singh, you were charged in this matter with one count of Rape and one count of Sexual Assault committed against Fiona Faira Hafiz (Prosecutrix) without her consent, as below:

COUNT ONE

Statement of Offence

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

Particulars of Offence

DANIEL SINGH: between the 14th of January 2019 to 31st of January 2019 at Nasinu, in the Central Division, had carnal knowledge of **FIONA FAIRA HAFIZ** without her consent.

COUNT TWO

Statement of Offence

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

Particulars of Offence

DANIEL SINGH between the 14th of January 2019 to 31st of January 2019 at Nasinu, in the Central Division unlawfully and indecently assaulted **FIONA FAIRA HAFIZ** by squeezing her breasts and touching her clothed genitalia

2. Upon reading of the charges in Court on 16th June 2020, Mr. Daniel Singh, you understood and pleaded not guilty to the charges filed against you. At the trial, the Prosecution led the evidence of the Prosecutrix and Romika Lata, a relative of the Prosecutrix. At the end of the Prosecution case, since the Court was convinced of the availability of a case for the Prosecution, acting under **Section 231** of the **Criminal Procedure Act of 2009**, Defense was called and all the available options were explained to you, where you opted to give evidence under cross-examination at this juncture. Considering the overall evidence led at the trial, this Court convicted you for both charges. This matter is coming up today for sentencing, where the Prosecution and Defense have filed their submissions in aggravation and mitigation.
3. In comprehending with the gravity of the offence you have committed, this Court is mindful that the maximum punishment for the offence of **Rape** under **Section 207 (1) and (2) (a)** of the **Crimes Act 2009** is Life Imprisonment and the maximum punishment for **Sexual Assault** under **Section 210** of the **Crimes Act of 2009** is imprisonment for a term of 10 years.
4. The accepted tariffs for the offences you have committed depend on the nature and circumstances under which Rape and Sexual Assault were committed, and the consequences entailing the commission of the offences to the victim and her family at large.
5. This Court also recognizes that to address the rapid increase of sexual offences in our community that shatters the fundamental values of our inclusive community, any punishment imposed by Court for this offence should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers in our society.
6. As per the existing law in Fiji, the sentencing tariff for Rape of a child ranges from 11 to 20 years' imprisonment as held in the case of *Aitcheson v State* [\[2018\] FJSC 29; CAV0012.2018 \(2 November 2018\)](#). The sentencing tariff for Sexual Assault ranges from 2 years to 8 year's imprisonment, as pronounced in the case of *State v Laca* [\[2012\] FJHC 252.2011 \(14 November 2012\)](#).
7. Considering the circumstances of this case, this Court sees that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, this Court would impose an aggregate sentence for you for Count 1 & 2.
8. In assessing the objective seriousness of your offending in this matter, this Court considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offences and the harm caused to the Prosecutrix. Court gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In this matter, you had committed these sexual offences on a girl who had stayed in your house for safety and security for a considerable period of time after the demise of her father. While residing at your residence, she was caring for your own daughter. In this background you have taken advantage of the circumstances and committed these offences when the Prosecutrix was alone in a room in your own house. In this regard, this Courts has a duty to discourage and deter this kind of behavior that belittles the much valued family fabric of our society. Having considered all these factors, this Court would pick a starting point of 12 years imprisonment against you from the lower range of tariff as the first step in the sentencing process.

9. In aggravation, Prosecution highlights that you had a domestic relationship between you and the Prosecutrix, where she was your sister-in-law. Therefore, you have held a position of trust and authority in this matter, which you betrayed by committing Rape and Sexual Assault against her. Further, referring to **Section 5 (a)** of the **Sentencing and Penalties Act of 2009**, Prosecution emphasizes that this Court should take into consideration any previous findings of guilt or convictions recorded against you. In this regard, it is brought to the attention of this Court that prior to the commencement of this case, you had been convicted and sentenced in case number **HAC 74 of 2020** for 3 counts of Rape and one count of Sexual Assault by another bench of this Court and you have been sentenced to 14 years imprisonment with a non-parole period of 11 years. Considering these factors, this Court increases your sentence by 3 years.
10. In mitigation, Defense counsel has informed this Court that you were the sole breadwinner of your family with a young daughter of schooling age. It is mentioned that you are now deeply remorseful for your actions in this matter. Further, it is pleaded to impose a concurrent sentence against you.
11. The prosecution brings to the attention of this Court that you have been in remand custody for 1 year and 17 days, which periods should be deducted from your sentence separately.
12. **Mr. Daniel Sing**, in considering all the factors analyzed above, this Court sentences you to 14 years and 350 days imprisonment with a non-parole period of 12 years imposed under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009**. Further, acting under **Section 22 (1)** of the **Sentencing and Penalties Act of 2009**, this Court orders you to serve this term of imprisonment concurrently with any other uncompleted sentences you are serving at present.
13. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage", written over a horizontal dotted line.

Hon. Justice Dr. Thushara Kumarage

At Suva
20th September 2022