

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Crim. Case No: HAC 57 of 2020

STATE

vs.

RAM KRISHNA

Counsel: Ms. Lomaloma for the State
Mr. Mr. J. Reddy & Mr. Kumar for the Accused

Date of Hearing: 24th, 26th, 27th October 2022

Date of Closing Submission: 28th October 2022

Date of Judgment: 02nd November 2022

Date of Sentence/Mitigation written Submission: 02nd and 3rd November 2022

Date of Sentence: 08th November 2022

SENTENCE

(The name of the victim is suppressed she will be referred to as "S.C.B.")

Introduction

1. Ram Krishna, you were found guilty and convicted on the 2nd November 2022 of the Representative count No. 1 of Sexual Assault Contrary to Section 210 (1) (a) of the Crimes

Act, 2009 and the Representative count No 2 of Rape contrary to Section 207 (1) and (2)(a) and (3) of the Crimes Act, 2009 by this Court after trial of which I presided. Both the prosecution and the defence have tendered comprehensive written submissions on sentencing and mitigation respectively. Accordingly you appear today to be sentenced for the said offences.

Circumstances of the Offending

2. The complainant S.C.B, born on 16th November 2009, was 10 years in March, 2020. You were almost 65 years old and was the immediate neighbor. You were known to her grandfather and has known her father and S.C.B since her birth. She considered you almost as a grandfather. Though there was some estrangement between your families the girl did respect you as an elderly neighbor. She spends much of her time when at home with her grandmother and the younger brother. Her mother and father are usually out during the day in view of their work and her elder brother live elsewhere.

3. During the week in question she remained at home and you did call her to a mango tree behind your houses. Then you forcibly inserted your penis and also licked the top part of her vulva. Once again, may be a day or two after, you accost her near the same mango tree and did the same thing. This is followed by three other acts of similar nature where you have successfully induced and got the girl to come to the mango tree to satisfy your lust. You by threats or otherwise kept the girl silent and ensured that she did not tell anybody. You have clearly taken advantage of a girl of 10 years in this way surreptitiously until your wife found out and this became public.

4. On all five occasions you did penetrate her vagina, lick her vulva and also suck her breast. This clearly shows that despite your seniority in age you have taken advantage of an extremely vulnerable girl who was young enough to be your granddaughter. These are the sordid acts I am reluctantly compelled to reproduce to lay the bare facts of this offending

which is necessary.

Sentencing regime

5. The maximum penalty prescribed for Rape contrary to Section 207 (1) and (2) (b)/(a) and (3) of the Crimes Act is life imprisonment as this undoubtedly is considered to be a very serious offence. The tariff is between 11 years and 20 years imprisonment. Determining this tariff Gates C.J., in **Aitcheson v. State** ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that,

“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.”

6. As for sexual assault in **State v Laca** - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012), Justice Paul Madigan considering the tariff for the offence of sexual assault stated thus,

*“6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum** HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.*

7. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

- (i) *Contact between the naked genitalia of the offender and another part of the victim's body;*
- (ii) *Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- (iii) *Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)".

7. The maximum penalty for the offence of sexual assault under Section 210 (1) (a) is ten years imprisonment. As the law stands now the tariff for sexual assault is between 2 - 8 years' imprisonment. The act of licking the vulva will come within category 2.

Objective seriousness, culpability and harm of the offending

8. In the case of *State v. Tauvoli* [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

9. Rape as well as sexual assault are physical invasions committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of

the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.

10. You have been found guilty of sexual crimes of utmost gravity. The offences involve the exploitation and abuse of a vulnerable child on five occasions over a period of a week or so. There are many features that aggravate the culpability and harm factors. You subjected her to repeated abuse. The victim was threatened, coerced and intimidated to facilitate the commission of the offences and to make the likelihood of her reporting them remote. The complainant felt both fear and misguided loyalty to you. She was reluctant to tell others even her mother, as to what you were doing to her. No doubt this encouraged you to carry on your depraved conduct for almost 5 days taking advantage of the opportunities you had whilst living in the same neighbourhood.

11. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to which S.C.B was traumatised by your disgusting behaviour and could not forget what was done to her. She felt angry and wronged. She has felt guilty, victimized and degraded when her relatives and school mates made comments about what you have done to her. She was hurt that her name and dignity were tarnished. There was a lot of overthinking where she lost interest in her school and found it difficult to concentrate on her studies. She also felt angry about what had happened to her at times and has taken the frustration out on other boys in her class. Her anger was targeted to males in general after what she had experienced. She finds it hard to trust males anymore. It is clear from the victim impact statement that your offending has had a very significant and long-lasting psychological impact on the vulnerable complainant which must be considered in sentencing.

12. The aggravating factors are as follows:

- (i) Serious Breach of Trust. You, acknowledged that you were old enough to be a grandfather to the child and now it is proved that you raped her. You occupied a position of influence and trust in relation to your neighbor's child. Such a position of power over the other who is a minor renders such sexual activity morally wrong and punishable within the realms of the criminal law. S.C.B was vulnerable to your seniority in age. You were in a position of trust. The culture and the traditions of your society expects you to protect children in the community and the elders enjoy the respect of the young. You taking advantage of this culture sexually exploited S.C.B a minor child. As echoed in many a judicial pronouncement, sexual exploitation of children within their own neighbourhood by known elders has become a social menace. Therefore, I find this offending to be serious. The rape of a child is an appalling and perverse use of male power exploiting to the full the position of power which you had over her. She was raped in the safety of her own back garden so to say, by a person from whom she was entitled to expect protection. You have violated the trust which the complainant placed on you and abused that position of trust
- (ii). There was a considerable disparity in age between you and the complainant. The complainant was 10 years old at the time you committed these offences on her and you were 65 years and so you were 55 years her senior in age.
- (iii) You sexually abused her and raped her multiple times during March 2020.
- (iv) This involved planning, scheming and premeditation.
- (v) You took advantage of the complainant's vulnerability, helplessness and innocence.
- (vi) You have exposed the innocent mind of a child to sexual activity at such a tender age you had no regard to her rights as a child and a human being and her right to have a happy, unmolested and peaceful childhood.
- (vii) You have caused untold misery to her family.

13. The mitigating factors are as follows:

- (i). You are now 67 years of age retired and unemployed. Unfortunately, these are all personal circumstances and cannot be considered as mitigating circumstances.
- (ii). As per the Antecedent Report filed, and the submissions it is noted that there no previous convictions. Therefore, this Court considers you as a person of previous good character.

Sentence

14. Your offences are so serious that only a custodial sentence can be justified. The least possible sentences I can impose having regard to the aggravating and mitigating factors of the case, will be as follows:

- a. We will start with the count No. 01 of Sexual assault, of licking the vulva which will be category 2, the intermediate range of the tariff. As such I pick a sentence of 4 years imprisonment. I add 4 years for the aggravating factors, making a total of 8 years imprisonment for the count of sexual assault. For the mitigating factor as aforesaid will deduct 2 years, leaving a balance of 6 years imprisonment.
- b. Now, as for the serious offence of rape, the Representative count No. 02, I pick and start with a sentence of 11 years imprisonment. I add 4 years for the aggravating factors, making a total sentence of 15 years imprisonment. As for the mitigating factors I will I deduct 2 years leaving a balance of 13 years imprisonment. Thus, for the rape count I sentence you to 13 years imprisonment.

15. I am satisfied that you are manipulative; you are somewhat of a sexual predator of a prepubescent child to some extent. On the one hand this is a case which would justify a long 'denunciatory' sentence. I bear in mind that, such a sentence is one of last resort and

in the circumstances of this offending in my judgment, justice and protection of the public can and should be achieved by such a long sentence.

16. However, I also have to bear in mind totality. To that end to arrive at a just compromise between the competing factors and interest of the society and direct and order that, the sentences of the sexual assault count and that of the Rape count to run concurrently. The total sentence then is 13 year's imprisonment.

17. In view of the reasons discussed above, I sentence you to a total concurrent period of thirteen (13) years imprisonment for the counts of sexual assault and Rape for which you stand convicted.

Non-Parole period

18. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that an eight (08) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for eight (08) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

19. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim the purpose of this sentence is to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what you did to the complainant and in a manner which is just in all the circumstances of the case.

Head Sentence

20. Accordingly, I sentence you to a period of thirteen (13) years imprisonment for the counts of Sexual assault and Rape as charged and convicted. However, you are not entitled to parole for eight (08) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

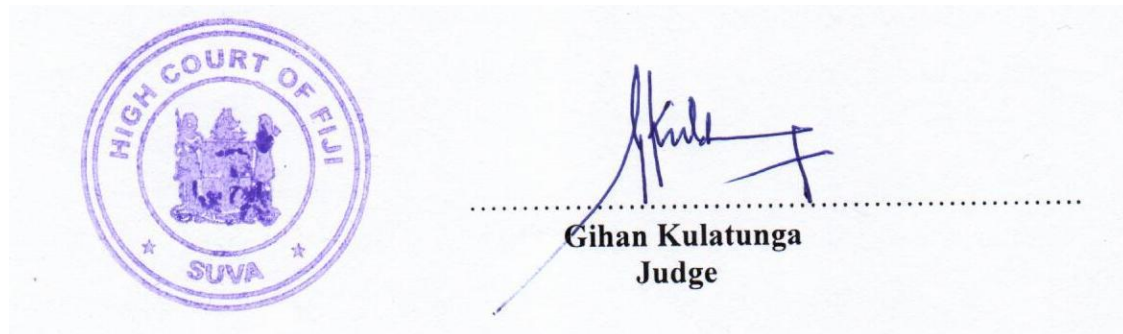
Actual Period of the Sentence

21. You were in arrested remanded for this case on 15th August 2020 and had been in remand up to 27th August 2020. You have been in custody for a period of 12 days. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 12 days months be considered as imprisonment that you have already served.

22. Accordingly, the actual sentence is a period of is twelve (12) years, eleven (11) months and eighteen (18) days imprisonment with a non-parole period of seven (07) years, eleven (11) months and eighteen (18) days.

23. The complainant's name is permanently suppressed to protect her privacy.

24. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Labasa via skype
08th November, 2022.

Solicitors
Office of the Director of Public Prosecutions for the State.
Jiten Reddy Lawyers for the Accused.