

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL DIVISION**

Criminal Case No. HAC 77 of 2022

**STATE**

**vs**

**KAMLESH PRASAD**

Counsels: Ms. Thaggard E - for State  
Mr. Kohli A - for Accused

**SENTENCE**

1. The accused in this matter, **Mr. KAMLESH PRASAD**, was charged with one count of **Rape** against the victim **Sunita Sonia Kumari**, as below:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**KAMLESH PRASAD** on or about the 11<sup>th</sup> day of April 2022, at Savusavu, in the Northern Division, had carnal knowledge of **SUNITA SONIA KUMARI** without her consent.

2. Upon reading of the charges in Court on the 2<sup>nd</sup> of September 2022, **Mr. KAMLESH PRASAD** understood and pleaded not guilty to the charge filed against him. At the trial, the Prosecution led the evidence of 2 witnesses. At the end of the Prosecution case, since the Defence was called by Court, the Accused opted to give evidence under cross-examination and 03 witnesses were summoned for the Defense. On 07/07/2023 the Judgement was delivered by Court and the Accused was convicted as charged. Today this matter is coming up for sentencing.

3. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum punishment for the offence of **Rape** under **Section 207 (1) and 2** of the **Crimes Act of 2009** is imprisonment for life.
4. The accepted tariff for count 1, depend on the nature and circumstances under which Rape was committed, and the consequences entailing the commission of the offences to the victim and the family concerned.
5. I also recognize that to address the rapid increase of sexual offences committed in in our society that shatters the fundamental values of our inclusive society, any punishment imposed by Court for these offences should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers in our society. In considering the commission of the offence of Rape in our society I would like to reiterate the sentiments expressed by the Supreme Court of Fiji in the case of *Aitcheson v State* [\[2018\] FJSC 29](#), as below:

*“Undoubtedly it has been accepted by the society that rape is the most serious sexual offence that could be committed on a woman. Further, it is said that, “A murdered destroys the physical body of his victim, a rapist degrades the very soul of a helpless female.”*

6. As per the existing law in Fiji, the sentencing tariff for Rape of an adult ranges from 7 years to 15 years’ imprisonment as held by the **Supreme Court of Fiji** in the case of *Rokolaba v State* [\[2018\] FJSC 12](#); CAV0011.2017 (26<sup>th</sup> April 2018).
7. In assessing the objective seriousness of your offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the victim. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**.
8. Having considered these factors, this Court would pick a starting point of 07 years imprisonment against you from the lowest range of tariff for the offence of Rape as the first step in the sentencing process.

9. In aggravation, the Prosecuting counsel brings to the attention of this Court, that by committing this offence on the victim you have breached the trust the victim had on you as her neighbour and relative. Prosecution claims that she came to work at your shop on the day of the incident as a result of the trust that she had on you and that you blatantly breached that trust by committing this offence on her when she was intoxicated. Considering this fact, I increase your sentence by (01) one more year.
10. Further, a victim impact statement of the victim **SUNITA SONIA KUMARI** had been submitted in this matter by her Counsellor. In this statement it has been mentioned that as a result of this incident she had felt broken, used, betrayed, humiliated and disgusted, where she shut herself from her relatives, friends and family since she felt that everyone is laughing at her because what happened to her. It is also stated in this statement that she attempted to end her life as result of the impact on her of this incident. Considering this astounding impact that your conduct had caused on the victim, I increase your sentence by six (06) months.
11. In mitigation, your counsel informs Court that you are the main caregiver to your sickly mother. In recognising the importance of family relationships in our society in this regard, I reduce your sentence by one (01) year.
12. **KAMLESH PRASAD**, in considering all the factors analysed above, I sentence you to 07 years and 06 months imprisonment with a non-parole period of 07 years imposed under **Section 18 (1) of the Sentencing and Penalties Act of 2009**.
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', is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

**At Suva**

**This 4<sup>th</sup> day of August 202**