

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 230/2022

STATE
V
PREM CHAND

COUNSELS:

Ms. Bibi. S and Ms. Tamanikaiyaroi. U - *for State*
Ms. Boseiwaqa. K and Ms. Chand. S - *for Accused*

Date of Hearing: 29.08 – 30.08,23

Date of Sentence: 20.10.23

SENTENCE

(The name of the victim is suppressed, as requested by the Prosecution, and will be referred to as AL in this Judgement)

1. The accused in this matter, **Mr. PREM CHAND**, was charged with one count of **Rape** against AL (**Prosecutrix**), a child under 13 years of age without her consent, as below:

COUNT ONE

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

PREM CHAND on an unknown date between the 1st January, 2021 and 15th June, 2022, at Muanikoso Settlement, in Narere, in the Central Division, penetrated the vulva of AL, with his fingers, a child under the age of 13 years.

2. Upon reading of the charge in Court on 08th September 2022, **Mr. Prem Chand** understood and pleaded not guilty to the charge filed against him. At the trial, the Prosecution led the evidence of 2 witnesses, including the evidence of AL the victim. At the end of the Prosecution case, since the Court was convinced of the availability of a prima facie case for the Prosecution, acting under **Section 231** of the **Criminal Procedure Act of 2009**, Defense was called from the Accused. At this point, the Accused opted to remain silent on the dock. The judgement in this matter was delivered by this Court on 30th August 2023 and this Court found the Accused Prem Chand guilty of rape under **Section 207 (1) and (2) (b) and (3)** of the **Crimes Act 2009**, as charged by the information. On the Prosecution and the Defense filing submissions on aggravation and mitigation, this matter is coming up today for the sentence.
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.
4. The accepted tariff for the offence you have committed depend on the nature and circumstances under which Rape was committed and the consequences entailing the commission of the offence 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 against young children 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 with a view of safeguarding the younger generation of our country.
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 by the **Supreme Court of Fiji** in the case of *Aitcheson v State [2018]*¹.
7. 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 offence and the harm caused to the Prosecutrix. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In this matter, you had committed the sexual offence on your 12-year-old niece, who was residing with you. 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.
8. Furthermore, in the process of this trial, this Court noticed how your family attempted to discourage the young victim not to complain against you. In this regard, when she complained to her own mother, that is your sister, she had simply ignored her complain. This Court must emphasize that it is a shame to notice that there are women in our society who call themselves mothers, but who do not have an iota of concern about the grievances of their own kith and kin

¹ [\[2018\] FJSC 29](#) (2 November 2018).

and who leave their children between the devil and the deep blue sea. Further, even in this Court premises, your extended family attempted to influence this victim, as divulged in evidence. In this background, this Court needs to affirm our citizenry that our Courts of Law will stand as the last bastion, if needed, for the protection of vulnerable victims. Having considered all these factors, this Court would pick a starting point of 12 years imprisonment against you as the first step in the sentencing process.

9. Prosecution also brings to the attention of this Court the **Supreme Court of Fiji** pronouncement in the case of *Ram v State [2015]*², where the Court has mentioned the need to consider how horrific the overall circumstances of the crime were to the victim. In this regard, Court had mentioned the suitability of *considering the following circumstances:*

- “(a) whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) **whether there had been a breach of trust;**=*
- (c) whether committed alone;*
- (d) whether alcohol or drugs had been used to condition the victim;*
- (e) **whether the victim was disabled, mentally or physically, or was especially vulnerable as a child;***
- (f) whether the impact on the victim had been severe, traumatic, or continuing;*
- (g) whether actual violence had been inflicted;*
- (h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) whether the method of penetration was dangerous or especially abhorrent;*
- (j) whether there had been a forced entry to a residence where the victim was present;*
- (k) whether the incident was sustained over a long period such as several hours;*
- (l) whether the incident had been especially degrading or humiliating;*
- (m) If a plea of guilty was tendered, how early had it been given? No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
- (n) Time spent in custody on remand.*
- (o) Extent of remorse and an evaluation of its genuineness;*
- (p) If other counts or if serving another sentence, totality of appropriate sentence.”*

10. In aggravation, Prosecution highlights that you had a domestic relationship between you and the victim, where she was inclined to faithfully trust you as her favorite uncle. Therefore, you have held a position of trust and authority over the victim in this matter, which you betrayed and exploited her vulnerability by committing this act of Rape. Considering this very grave consideration, this Court increase your sentence by 2 years.

² [2015] FJSC 26 (23rd October 2015)

11. The prosecution brings to the attention of this Court that you have been in remand custody for 1 year and 3 months in relation to this matter, which periods should be deducted from your sentence separately.
12. **Mr. Prem Chand**, in considering all the factors analyzed above, this Court sentences you to 12 years and 9 months imprisonment with a non-parole period of 12 years 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 blue ink, consisting of several loops and a long horizontal stroke at the end.

Hon. Justice Dr. Thushara Kumarage

At Suva.

20th of October 2023

*cc: The Office of Director of Public Prosecutions
The Office of Legal Aid Commission*