

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 28 OF 2019

STATE

v

RAJNEEL NARAYAN

Counsel: Mr M.I. Rafiq for State
Mr J.K. Singh with Ms K. Kumar for Defence

Date of Judgment: 15 April 2024

Date of Sentence: 29 April 2024

(The name of the Complainant is suppressed. She is referred to as LD)

SENTENCE

1. Mr Rajneel Narayan, you were convicted with three counts of Rape and one count of Indecent Assault on the following information filed by the Director of Public Prosecutions:

COUNT 1
Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RAJNEEL NARAYAN on the 4th day of February 2019 at Sigatoka in the Western Division unlawfully and indecently assaulted LD by fondling her breast.

COUNT 2
Statement of Offence

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

Particulars of Offence

RAJNEEL NARAYAN on the 4th day of February 2019 at Sigatoka in the Western Division penetrated the vagina of LD with his finger without her consent.

COUNT 3
Statement of Offence

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

Particulars of Offence

RAJNEEL NARAYAN: on an occasion other than in Court 2 at Sigatoka, in the Western Division, penetrated the vagina of LD with his finger without her consent.

COUNT 4
Statement of Offence

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

Particulars of Offence

RAJNEEL NARAYAN on the 4th day of February 2019 at Sigatoka, in the Western Division, had carnal knowledge of LD without her consent.

2. The facts of the case briefly were that the victim was 19 years old at the time of the offence and was about to enter the FNU in Namaka. To earn bus fare to go to Namaka, she went to the forest to pick 'ota' (wild fern). Being a farmer at victim's family farm, you had come to meet her uncle and was present when she informed the purpose of her visit to the forest.

3. You secretly followed her into the jungle and while she was picking ‘Ota’ you smacked her from her back and grabbed her tightly. When she started to call for help, you covered her mouth and told her not to call anyone. You managed to make her lie down and squeezed her breast on top of her bra. You then touched her private part and inserted your finger inside her vagina. In the struggle, she managed to smack you with her boot and run away down to the river. You followed her and got hold of her. You pulled her to a muddy place and made her lie down. You inserted your fingers in to her vagina again. You then started kissing and bit her neck. You then pulled her legs up and inserted your penis inside her vagina. You did all these things without her consent. The matter was soon reported to police and the victim was medically examined. It was confirmed that she had injuries consistent with the allegation.
4. The maximum sentence for Rape is life imprisonment. The sentencing tariff for adult rape ranges from 7 years to 15 years’ imprisonment¹. The starting point in an adult rape case is at least seven years’ imprisonment. However, there are cases where the proper sentence may be substantially higher or substantially lower than that starting point, depending on the circumstances of the case²
5. In selecting a sentence that fits your offence, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to the maximum penalty prescribed for the offence, the current sentencing practice and the applicable sentencing guidelines issued by the courts. Having considered the seriousness of the offence and the harm caused to the victim, I would select the appropriate starting point. The final sentence will be determined after making appropriate adjustments for the aggravating and the mitigating circumstances.
6. Sexual offences are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor

¹ (Rokolaba v State [2018] FJSC 12 (26 April 2018))

² [Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994) (State v Marawa [2004] FJHC 338)]; Rokolaba v State [2018] FJSC 12 (26 April 2018)

to prevent the commission of such offences. The offenders must receive condign punishment to mark the society's outrage and to denounce sexual abuse in our society.

7. All the convictions are founded on the same facts that form a series of offences of similar character. Therefore, in view of the provisions of Section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for all four offences you are convicted of.
8. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 8 years for the aggregate sentence.
9. The Counsel from both sides have filed sentencing/ mitigation submissions for which I am grateful. The following aggravating and mitigation factors have been identified in the offence which will be used to make appropriate adjustments to your sentence:

Aggravating factors:

- (a). You committed this offence on a vulnerable victim when she was alone in the forest.
- (b). You assaulted the victim not only sexually but also physically when you punched, stripped her naked and caused some injuries.
- (c). You planned this offence and secretly followed the victim into the forest.
- (d). You prevented the victim from seeking help by blocking her mouth when she was crying for help.
- (e). There is a considerable age gap between you (32) and the victim (24).

Mitigating Factors:

- (a). You are a labourer, 32 years of age and you reside with the family. You are the sole breadwinner of the family looking after your elderly mother.
- (b). You are a first offender. You have maintained a clear record until you committed this offence.
- (c). You have cooperated with the police during investigations.

10. I add 2 years to the starting point of 8 years for the above-mentioned list of aggravating factors to arrive at an interim sentence of 10 years imprisonment for all four offences. I reduce 1 year for the mitigating factors to arrive at an aggregate sentence of 9 years imprisonment for all the four offences.
11. According to the State, you had spent only two days in remand before the conviction. After the conviction you spent 14 days in remand. I would consider your remand period as part of your sentence already served.
12. You are relatively young and a first offender. Taking into consideration your age, potential for rehabilitation, the gravity of the offences and the impact of the offences on the society, I impose a non-parole period of 7 years.
13. Summary
Mr. Rajneel Narayan, you are sentenced to an imprisonment term of nine (09) years with a non-parole period of seven (07) years. You are eligible for parole when you have served seven years in the correction facility.
14. You have 30 days to appeal to the Court of Appeal.



Aruna Muthge

Judge

29 April 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

J K Singh Lawyers for Defence