

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

HAC 119 OF 2022

BETWEEN: STATE

PROSECUTION

AND: ROHIT PRASAD

ACCUSED

Appearances: Mr L Baleilevuka (ODPP) for the State
Ms B Muhammed (LAC) for Accused

SENTENCE

1. Rohit Prasad you were found guilty and convicted after trial for the third count of Rape contrary to section 207(1) and (2)(b) of the Crimes Act, 2009 and fourth count of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act, 2009.
2. The facts are on 15th May 2021 between 1pm – 4pm at China Settlement, Barotu, Ra, the victim (Saras Wati) and you were clearing the ground around the chilly farm which was some distance away from victims house on the mountain side. Whilst the two of you were working at the chilly farm, you then confronted the victim on allegations that she was having affairs with other men. You then began to beat the victim with a vaivai stick and also a knife. You then hit her on her hand and leg. Then with the knife you cut her hand and threatened to kill her. The victim cried and shouted but no one heard her as there was no one around. You then forcefully removed her clothes. You then laid her on the ground and lifted up her legs. At that time you already had undressed. You then came on top of her and inserted your penis into her vagina and had sexual intercourse with her for about 10 minutes. It was raining then and she was lying on the grass. After raping her, you then left the scene

and went away. Thereafter the victims son (Nilesh) and grandson (Arav) came to the scene after you relayed to them what you did to her. The victim then informed Nilesh and Arav what you did. The victim was then escorted home and later that evening, the matter was reported to police. The victim was then medically examined the same day at night. The medical report confirms the injuries sustained by the victim.

3. The offence of Rape contrary to section 207(1) and 2(b) of the Crimes Act 2009 carries a maximum imprisonment term of life imprisonment.
4. In Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994), it was established that the tariff for rape on adults would be a starting point of 7 years without any mitigating or aggravating circumstances. It further appears according to Rokolaba v State [2018] FJSC 12 (26 April 2018) that sentencing tariff for adult rape ranges from 7 years to 15 years imprisonment.
5. With regard to the offence of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act, 2009, the prescribed penalty is a maximum imprisonment term of 5 years.
6. The tariff for the offence of Assault Causing Actual Bodily Harm ranges from a suspended sentence where there is a high degree of provocation to 9 months imprisonment for serious assaults that cause harm [see: Jonetani Sereka HAA 27/2008 (25th April 2008)].
For Assault Causing Actual Bodily Harm committed in a domestic setting, the tariff would range from 6 months to 18 months imprisonment [see: State v Kumar [2019] FJHC 544; HAC 46.2019 (22nd May 2019)].
7. The two offences were committed within the same transaction, hence I find an aggregate sentence pursuant to section 17 of the Sentencing & Penalties Act 2009, apt in the circumstances. Rape being the more serious offence in the present matter, I consider as the principal offence.
8. There has been a disturbing increase in the occurrence of Rape and other sexual related offences in Fiji in recent times. The crime of Rape is a despicable act that

causes immense physical and emotional pain to its victims. It is deeply troubling and undermines a person's sense of security when their fundamental right to bodily autonomy is violated and their trust is betrayed. When it comes to sentencing cases involving Rape and other sexual related offences, it is crucial for the courts to fulfil their responsibility of imposing a sentence that serves as a clear reminder to the offender. Additionally, it sends a strong message to others in the community who may have similar intentions, making it clear that such behavior will not be tolerated by the courts. Furthermore, it is crucial that the punishment appropriately reflects the disapproval of the community and serves as a strong condemnation of the crime.

9. Taking into account the objective seriousness of the offending and harm sustained by the victim, I commence your sentence at 7 years imprisonment.
10. For the aggravating factors which I consider as being the breach of trust, prevalence of domestic & sexual related offences in community and elements of force and threats being used to conduct your hateful behavior, I increase your sentence to 10 years imprisonment.
11. This being your first offence and being of good character before the offending and family background, I reduce your sentence and arrive at a term of 8 years imprisonment.
12. You were arrested in this matter on 29th July 2022 and granted bail on 1st August 2022. The trial in this matter proceeded on 20th May 2024 and at its completion, judgment was pronounced on 24th May 2024. You were remanded in custody after judgment was delivered. Altogether your total days being remanded in custody was 9 days. That will be taken as time already served in custody hence further reductions is imposed on your sentence.
13. Your final sentence is therefore 7 years 11 months 21 days imprisonment.

14. Bearing in mind the circumstances of offending, your background and potential for rehabilitation and the impact of such offending on society, I impose on you 6 years imprisonment as non-parole period.
15. **You are therefore ordered to serve a total aggregate sentence of 7 years 11 months 21 days imprisonment with a non-parole period of 6 years imprisonment.**
16. In addition to the above sentence of imprisonment, the interim Domestic Violence Restraining Orders (i.e. sections 27 & 29 of Domestic Violence Act 2009) imposed against you by the Learned Magistrate on 1st August 2022, are hereby made permanent forthwith.
17. The said restraining orders can only be varied, suspended or discharged by further court orders.
18. You are at liberty to appeal within 30 days to the Court of Appeal.



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Samuela D Qica

Judge

High Court – Lautoka

Thursday, 30th May 2024