

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 249 OF 2020

STATE

vs.

SHAHIL DYER RAJ

Counsel:

Ms. Latu L with Mr. Zunaid Z. - *for State*
Mr. Chand P - *for Accused*

Date of Hearing: 04.12.23 – 08.12.23

Date of Judgment: 22.01.24

Date of Sentence: 25.01.24

SENTENCE

(The names of the victims are suppressed, as requested by the Prosecution, and will be referred to as AAR – 1 and AAR - 2 in this Judgement)

1. The accused in this matter, **SHAHIL DYER RAJ**, was charged with one count of **Rape** and one count of **Sexual Assault** against AAR - 1 (**Prosecutrix 1**), a child under 13 years of age and with one count of **Rape** against AAR – 2 (**Prosecutrix 2**), a child under 13 years of age, as below:

COUNT 1

(Representative Count)

Statement of Offence

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

Particulars of Offence

SHAHIL DYER RAJ between the 1st day of January, 2019 and 29th day of July, 2020 at Caubati, Nasinu in the Central Division, penetrated the vulva of **AAR - 1**, a child under the age of 13 years, with his tongue.

COUNT 2

(Representative Count)

Statement of Offence

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

Particulars of Offence

SHAHIL DYER RAJ between the 1st day of January 2019 and 29th day of July, 2020 at Caubati, Nasinu in the Central Division, penetrated the vulva of **AAR - 2**, a child under the age of 13 years, with his tongue.

COUNT 3

(Representative Count)

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210(1) (b) (ii) of the Crimes Act 2009.

Particulars of Offence

SHAHIL DYER RAJ between the 1st day of January 2019 and 29th day of July, 2020 at Caubati, Nasinu in the Central Division, procured **AAR - 1**, a child under the age of 13 years, to witness an act of gross indecency by displaying and placing his penis on the hand of **AAR**

2. Upon reading of the charges in Court on 28th September 2020, **SHAHIL DYER RAJ** understood and pleaded not guilty to the charges filed against him. At the trial, the Prosecution led the evidence of 4 witnesses, including the evidence of the victims. At the end of the Prosecution case when the Defense was called the Accused opted to give evidence and one witness was called. The judgement in this matter was delivered by this Court on 22nd January 2024 and this Court found the Accused **SHAHIL DYER RAJ** guilty of two counts of **Rape** under **Section 207 (1) and (2) (b)** of the **Crimes Act 2009** and one count of **Sexual Assault** under **Section 210 (1) (b) (ii)** of the **Crimes Act of 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) (b)** of the **Crimes Act 2009** is Life Imprisonment.
4. The accepted tariffs for the offences you have committed depend on the nature and circumstances under which Rape, and the consequences entailing the commission of the offence to the victims and their 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. In this regard, this Court would like to highlight the observations made by **Justice Gounder** in the case of *State v. AV [2009]*¹, as follows:

“Rape is the most serious form of sexual assault. In this case, a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences”.

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]*².
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 victims. 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 offences on your two cousins, who were 10 and 8 years old and who treated you as their own brother. 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 you have fooled these two young girls and indicated to them that you were playing a game by sucking their private parts. Also, there was initial reluctance for your family members to complain about your conduct, since you were the most senior mail child in your family. 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. In aggravation, prosecution highlights that there had been a grave breach of trust in this matter, where the victims proceeded to tolerate your acts of sexual abuse, since they believed that the elder brother was playing a game by licking their private parts. They were so vulnerable and gullible, where you exploited their innocence. In this

¹ [2009] FJHC24

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

regard, Prosecution brings to the attention of this Court the **Supreme Court of Fiji** pronouncement in the case of ***Ram v State [2015]***³, where the Court has mentioned the need to consider how horrific the overall circumstances of the crimes 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. Further, Prosecution emphasizes the relevance of victim impact statements made by the two victims, where AAR - 1 had stated the difficulties she faces in social interactions, as below:

- *Find difficulty in making friends in school;*
- *She is now slow in understanding and even in academic work;*
- *Stays quiet and always on her own;*
- *Sleeps a lot;*

³ [2015] FJSC 26 (23rd October 2015)

- *Some of the wants are met at a later date since the mother isn't working which makes them sad and tensed at times;*
- *From 1 year she hasn't been going anywhere since family members have been asking questions in relation to the offence.*

Considering the above analyzed grave consideration, this Court increase your sentence by 2 years.

11. Your counsel informs this Court in mitigation that you were of a young age at the time of committing this offence. This Court recognizes your young age and that you have a very high rehabilitation potential. Therefore, this Court reduces your sentence by 2 years.
12. The Prosecution brings to the attention of this Court that you have been in remand custody for 2 year and 3 months in relation to this matter, which periods should be deducted from your sentence separately.
13. **SHAHIL DYER RAJ**, in considering all the factors analyzed above, this Court sentences you to 9 years and 9 months imprisonment with a non-parole period of 9 years and 3 months imprisonment under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009**.
14. You have thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Justice Dr. Thushara Kumarage

At Suva
This 25th day of January 2024

Cc: Office of the Director of Public Prosecutions
Office of the Legal Aid Commission