

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 100/2022

STATE

V

ELVIN NAND

COUNSELS:

<i>Ms. Bibi and Ms. Kumar P.</i>	-	<i>for Prosecution</i>
<i>Mr. Emasi I</i>	-	<i>for Accused</i>

Date of Hearing: 27.11 – 01.12.23

Date of Judgment: 31.01.24

SENTENCE

1. The accused in this matter, **ELVIN NAND**, was charged with one count of **Rape** and one count of **Sexual Assault** against SUPRIYA CHAND, as below:

COUNT 1

Statement of Offence

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

Particulars of Offence

ELVIN EVIN NAND on a date between the 1st day of July 2021 and the 31st day of July 2021 at Nanuku Settlement, Vatuwaqa in the Central Division, penetrated the vagina of **SUPRIYA CHAND** with his fingers, without her consent.

COUNT 2

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) of the Crimes Act 2009.

Particulars of Offence

ELVIN EVIN NAND on a date between the 1st day of July 2021 and the 31st day of July 2021 at Nanuku Settlement, Vatuwaqa in the Central Division, on an occasion other than in Count 1, at Nanuku Settlement, Vatuwaqa in the Central

Division, unlawfully and indecently assaulted **SUPRIYA CHAND** by squeezing her breasts and kissing her lips.

2. Upon reading of the charges in Court on 27/04/2022, **ELVIN NAND** 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 the victim, **Suriya Chand**. At the end of the Prosecution case, Defence was called, and the Accused opted to give evidence under cross-examination and one more witness was summoned. The Court delivered the judgement in this matter on 26th January 2024 and the Accused was convicted as charged in the information on 2 counts. On considering the sentencing submissions filed by the Prosecution and the Defense, today this matter is coming up for sentence, which is as below:
3. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of **Rape** under **Section 207 (1) and 2 (b)** of the **Crimes Act of 2009** is an imprisonment for life and the maximum punishment for **Sexual Assault** under **Section 210 (1) (a)** of the **Crimes Act of 2009** is imprisonment for 10 years.
4. The accepted tariff for counts 1 and 2 depend on the nature and circumstances under which Rape and Sexual Assault was committed, and the consequences entailing the commission of the offences to the victims 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 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. In relation to **Sexual Assault** the tariff is between 2 years to 8 years imprisonment, as identified by **Justice Midigan** in the case of *State v Epeli Ratabacaca Laca* [\[2012\]](#).²
7. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence for you for Count 1 and 2.

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

² [\[2012\] FJHC 252](#) (14th November 2012)

8. In assessing the objective seriousness of your offending in this matter, I considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offences 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**.
9. Having considered these factors, this Court would pick a starting point of 11 years imprisonment against you from the lowest range of tariff for the offence of Rape of a juvenile, as the first step in the sentencing process.
10. 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 cousin who welcomed you without any hesitation in her house. Further, Prosecution claims that the victim was vulnerable in this matter, since she didn't have her parents living with her. Considering this fact, I increase your sentence by (01) one more year.
11. In mitigation, your counsel informs Court that you are young and maintained a good character before the involvement in this offence. Considering your age and rehabilitation potential, I reduce your sentence by two (02) years.
12. Further, your counsel informs this Court that you have been in custody for 2 months in connection with this matter, which period must be deducted separately from your final sentence.
13. **ELVIN EVIN NAND**, in considering all the factors analysed above, I sentence you to 09 years and 10 months imprisonment with a non-parole period of 09 years and 04 months imposed 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.



A handwritten signature in blue ink, appearing to read 'Thushara Kumarage'.

Hon. Justice Dr. Thushara Kumarage

At Suva

This 30th day of January 2024

cc: - *Office of the Director of Public Prosecutions*
 - *Office of the Legal Aid Commission*