

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 121 of 2023

BETWEEN : STATE

AND : PARMESH KUMAR

Counsel : Ms S Bibi and Mr Vaurasi for the State  
Mr M Yunus and Mr Prasad for the Accused

Judgment : 28 January 2025

Mitigation/Submissions : 14 February

Sentence : 25 February 2025

SENTENCE

(the name of the victim is suppressed and she is referred to 'CH')

- [1] Parmesh Kumar, you appear today for sentence. You have been found guilty, following a defended trial, of 2 counts of indecent assault, 1 count of sexual assault and 1 count of rape against the victim, CH.
- [2] CH is your niece. She was 17 years old at the time of your offending for 3 of the counts and, therefore, a juvenile. She was 18 years by the time of your offending for count 4. You were 53 years old.
- [3] On 20 August 2022, you and CH were travelling in your car to pick up your daughter. Whilst driving, you assaulted her by placing your hand on CH's thigh and vagina over her clothes. You then parked the car, wound up the windows and locked the car. You proceeded to procure CH to touch your penis and then raped her by making her suck your penis until you ejaculated.

- [4] On 16 March 2023, whilst CH was visiting your home, you assaulted her by placing your hand on her vagina over her clothes.
- [5] The following mitigation has been provided on your behalf:
- You are 56 years old and the sole breadwinner for your family. You also look after your mother and mother-in-law.
  - You have a number of serious medical conditions.<sup>1</sup>
  - You are a first offender.
  - Whilst you have been found guilty of the offences, there is no evidence that you acted in a cruel manner or resorted to extreme force or violence on the victim.
- [6] The maximum penalty prescribed for rape is **life imprisonment**. The tariff for the rape of a juvenile is between 11 to 20 years imprisonment. The maximum penalty for sexual assault is **10 years imprisonment** and I take note of the categories described by the High Court in *State v Laca* [2012] FJHC 1414 (14 November 2012). I am satisfied that the facts for your offending (for count 2) fall within category 2. The maximum penalty for indecent assault is **5 years imprisonment**.
- [7] The first three counts relate to the same occasion and it is appropriate to take an aggregate for these counts. The fourth count, whilst committed on a separate occasion, is of a similar nature as the first three, and as such will be included in the aggregate sentence for you. However, I do not lose sight of the fact that the fourth count reflects a continuation of your offending.
- [8] In assessing the objective seriousness of your offending in this matter, I have considered the maximum sentences prescribed for the four counts, the degree of culpability, the manner in which you committed the offences and the harm caused to CH. I give proper consideration to the sentencing guidelines stipulated in section 4 of the Sentencing and Penalties Act 2009. In my view, the appropriate starting point for your offending is 11 years.

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<sup>1</sup> The medical conditions are described at 13(iii) of Mitigation Submissions - medical reports were supplied.

[9] The aggravating factors that are present here are:

- i. **Vulnerable victim:** CH was 17 years old and would have felt safe in your car having known you her entire life.
- ii. **Breach of trust:** You are CH's uncle. Her family and your family are close. You took advantage of that relationship and violated her trust.
- iii. **Age difference:** There is an age disparity between you and CH of 35 years.
- iv. **Impact on victim:** The impact will be long-standing. CH has completed a Victim Impact Statement explaining the impact of your offending on her. She indicates that she no longer trusts people's motives. Whilst she feels she has healed, she continues to have memories of the trauma which undermine her feelings of safety. She also states that she has struggled with fear and depression.

[10] I add 3 years for these aggravating factors taking your sentence to 14 years.

[11] I turn to the mitigating factors. You are a first offender. Up until this offending you were of previous good character. The courts have been mindful to show leniency for first offenders. The court must leave the door open for your rehabilitation. I have not overlooked your many and serious medical conditions. However, that cannot be considered a mitigating factor in the sentence that is imposed on you. I deduct 2 years for mitigating factors leaving a balance of 12 years imprisonment.

[12] I turn to consider your non-parole period. This Court must impose a non-parole period where you have received a sentence of 2 years or more unless I consider the nature of your offences or your past history make the fixing of a non-parole period inappropriate. While you were of previous good character, in my view the prevalence of sexual offending on children and young persons in Fiji require that a non-parole period is imposed on you. The Court must strike a balance between deterrence on the one hand and not discouraging rehabilitation on the other. In all the circumstances, in my view a reasonable non-parole period for you is 8½ years.

[13] I have considered the sentences imposed in the cases that have been brought to my attention by your lawyer and the prosecution. I am satisfied that your sentence is in line with those sentences.

[14] Finally, I note that you have spent some time already on remand in 2023 and from 28 January 2025, the amount of time on remand being approximately two months.<sup>2</sup> Pursuant to section 24 of the Sentencing and Penalties Act, I reduce your sentence by the time already spent on remand so that the result is that your actual sentence is 11 years and 10 months and your non-parole period is 8 years and 4 months.

[15] Mr Kumar, would you please stand.

[16] You have been found guilty of four counts of sexual offending against your niece. You have robbed your niece of her innocence and stripped her of the security she ought to naturally feel around her family. Your actions will no doubt affect your niece's ability to trust males and form her own relationships in the future.

[17] I make the following orders:

- i. You are sentenced to a period of imprisonment of 11 years and 10 months with a non-parole period of 8 years and 4 months.
- ii. The victim, CH, will have permanent name suppression.
- iii. I issue a permanent Domestic Violence Restraining Order against you to protect CH. The order is for a standard non molestation and non-contact conditions pursuant to sections 27 and 29(1),(2)(a),(b) & (e) of the Domestic Violence Act 2009.
- iv. You have 30 days to appeal to the Court of Appeal.

  
D. K. L. Tuigereqere  
JUDGE

The signature is written in blue ink over a circular purple stamp. The stamp contains the text 'HIGH COURT OF SUVA' around the perimeter and a central emblem. Below the signature, the name 'D. K. L. Tuigereqere' and the title 'JUDGE' are printed in black.

<sup>2</sup> From 22/3/23 to 2/5/23 and 28/1/25 to 25/2/25.

**Solicitors**

Office of the Director of the Public Prosecutions for the State

M.Y. Law for the Accused