

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 36 of 1981

000259

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

MAHENDRA SINGH s/o
HUKUM SINGH

Mr. K.R. Bulewa for the Appellant.
Respondent in Person.

JUDGMENT

This is an appeal by the Director of Public Prosecutions that the sentence passed by the Nausori Magistrate's Court upon the respondent following his conviction on a charge of rape was manifestly lenient.


The facts which were admitted by the respondent showed that on the afternoon of Saturday 18th April 1981 at about 5 p.m. the complainant a girl of six and a half years of age was left along with her two small brothers by their mother in the care of the respondent at his house at 9 Miles Nasinu. The arrangement was made to enable complainant's mother and respondent's wife to attend a film show at Trishul Theatre. The two women did not return from the show until 11 p.m. When she collected the complainant, her mother noticed that her daughter's panty was stained with blood and sought an explanation whereupon her daughter complained that the respondent had done it. The matter was reported to the police. When approached by the police respondent admitted the offence and said his penis only went as far as an inch into the girl's vagina. The medical report showed that the complainant suffered a circular tear on the perineum, extending from the lower part of the vaginal orifice to half a centimetre away from the anal orifice. The injuries had required two sutures. The complainant has apparently fully recovered from her injuries.

The respondent is forty one years of age, married with three children, the youngest child being two years old. The family lives in a Hart house in poor circumstances at Nasinu. Respondent has a number of previous convictions but none of them involved sexual offences.

Bearing in mind the tender age of the complainant and the public need for young girls to be protected against sexual abuses I agree with the Crown submission that a sentence of three years' imprisonment was manifestly inadequate for the offence committed. It must be made clear that this type of offence involving young girls cannot but be viewed with utmost gravity by the Courts. I accept however in respondent's favour that he did not use untoward violence upon the complainant in perpetrating the offence in question. I also accept that he has no history of sexual offences and this appeared to be an isolated case. But for these matters this Court would have had no hesitation in imposing a much longer sentence in this case.

Respondent pleaded his poor circumstances and the hardship that his family would suffer without his support as he is the sole breadwinner. The Court fully appreciates the problems to respondent's family arising from his incarceration. It is unfortunately inevitable when anyone flouts the law of the country necessitating a prison sentence. The Court in this case owes a larger duty and that is to protect its innocent ones.

The appeal is allowed. The sentence passed in the Court below is set aside and in lieu thereof a sentence of five years' imprisonment is substituted.


Chief Justice

Suva,
17th July 1981.