

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 117/ 2011**

**BETWEEN : STATE**

**AND : RAVEN PRASAD**

**COUNSELS : Ms L Koto for the State  
Mr S K Waqainabete for the Accused**

**Date of Trial : 03-04/04/ 2013**

**Date of Summing Up : 08/04/ 2013**

**Date of Judgment : 09/04/2013**

**Date of Sentencing Hearing : 10/04/2013**

**Date of Sentencing : 11/04/2013**

## **SENTENCE**

[Name of the victim is suppressed. She will be referred to as SSN]

01. The Director of Public Prosecution had preferred the following charges against the accused above named.

### **THE FIRST COUNT**

#### **STATEMENT OF OFFENCE**

**RAPE:** Contrary to Section 207(1) (2) (a) of the Crimes Decree No: 44 of 2009.

### **PARTICULARS OF OFFENCE**

Raven Prasad on the 23<sup>rd</sup> of August 2010 at Nadawa in the Southern Division had carnal knowledge of SSN without her consent.

### **THE SECOND COUNT**

#### **STATEMENT OF OFFENCE**

**RAPE:** Contrary to Section 207(1) (2) (a) of the Crimes Decree No: 44 of 2009.

#### **PARTICULARS OF OFFENCE**

Raven Prasad on the 24<sup>th</sup> of August 2010 at Nadawa in the Southern Division had carnal knowledge of SSN without her consent.

02. After trial on the charges, the accused was found guilty on all the counts. Accordingly he was convicted on all the charges.
  
03. According to Victim SSN she is residing at Lautoka. Before she lived at Nadera. At Nadera she was living with one of her aunty, uncle and her cousin. She has one brother and a sister. Her father's name is Mohamed Umar. In the year 2010 she lived with her step father at Nadera. His name is Raven Prasad (accused). Her brother and sister also lived with Raven Prasad. On 22/08/2010 she had gone for sleep at about 7.00pm after dinner. Her sister, brother and accused were in the house. As it was a one bedroom house she slept with her sister and her brother in one double bed. When she went to sleep accused was drinking beer under the porch. At about 12.00pm she went to the washroom and slept again. While sleeping she suddenly felt someone was on her body. When she opened her eyes saw accused was on her top. Though she agitated accused took off her clothes and put his private part into her private part for about five minutes. She felt very painful at that time. Accused threatened her with death if she divulges this to anybody. She could not wake up her brother or her sister as they were sleeping little away from her. After the incident accused went out and she put her panty and slept. On 23/08/2010 accused repeated the same on the victim. Accused took off her clothes and inserted his private part into her private part. At that time nobody was in the room. Her brother and sister were sleeping. She had informed this to accused's wife Praba Wati.

04. In this case the accused took up the position that he never had sex with the victim and therefore denied charges. According to him he had been maliciously implicated on the instructions of Nirmala Wati.
05. As per section 207(1) (2) (a) of the Crimes Decree No: 44 of 2009 the maximum sentence for an offence of Rape is to imprisonment for life.

### **Tariffs for Rape**

06. In the case of **Chand v State** [2007] AAU005. 2006S (25 June 2007), the court referred to the case of **Mohammed Kasim v The State** Appeal 14 of 1993 where the same court observed:

“We consider that any rape case without aggravating or mitigating feature the starting point for sentencing an adult should be a term of imprisonment of 7 years. It must be recognized by the courts that the crime of rape has become altogether too frequent... the sentences imposed by the courts for that crime must...reflect an understandable public outrage”

In **Sireli v State** [2008] FJCA 86; AAU0098 of 2008S (25 November 2008). The court also referred to the case of **State v Lasaro Turagabeci & others** HAC 0008 of 1996, the court observed:

“The courts have made it clear that rapist will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences of the victim are likely to be severe. The courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentence”.

In the case of **Drotini v The State** [2006] FJCA 26; AAU0001.2005 (24 March 2006); the court noted following:

“There are few more serious aggravating circumstances than where the rape is committed on a juvenile girl by a family member or someone who is in a position of special trust. The seriousness of the offence is exaggerated by the fact that family loyalties and emotions all too often enable the offender or other family members to prevent a complaint going outside the family. If the child then remains in the

family home, the rapist often had the opportunity to repeat the offence and to hope for the same protection from the rest of the family.

Cases of rape by fathers or step fathers appears before the court in Fiji far too frequently and ,in such cases, the starting point should be increased to ten years. Where there are further aggravating circumstances beyond those basic circumstances, such as repeated sexual molestation of any nature, threat of violence or actual violence or evidence that the offender has attempted to persuade other family members to help cover up the offences or discourage complaint to the police, there should be substantial increases above that starting point.

In any such case, there are few possible mitigating circumstances beyond a plea of guilt and the sentencing court should be careful of evaluate any matters put forward as suggested mitigation against the family situation. Thus, for example, whilst subsequent concern for, or assistance of, the victim following rape on a stranger may be accepted as some mitigation of the offence, a similar situation in a family rape would do little to mitigate the initial breach of trust. In the present case, the appellant made no attempt to avoid his daughter becoming pregnant and we regard that as a substantial aggravation of the breach of trust”.

In **State v AV** [2009] FJHC24: JAC 192.2008(2 February 2009) the court stated:-

“Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assault 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.”

07. The accused is 51 years of age and looks after three children who are schooling. His de facto wife had died. He does grass cutting to earn a living. His children are between the age of 9 and 16 years. He is a first offender.
08. In **O’Keefe v State** [2007] FJHC: 34 the Fiji Court of Appeal held that the following principle of sentencing:

“When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person”

09. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the sections set out below in order to determine the appropriate sentence.
10. Section 15(3) of the Sentencing Decree provides that:  
“as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in Section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the decree”.
11. The objectives of sentencing, as found in section 4(1) of the Decree, are as follows:
1. To punish offenders to an extent and a manner, which is just in all the circumstances;
  2. To protect the community from offenders;
  3. To deter offenders or other persons from committing offences of the same or similar nature;
  4. To establish conditions so that rehabilitation of offenders may be promoted or facilitated;
  5. To signify that the court and the community denounce the commission of such offences; or
  6. Any combination of these purposes.
12. Section 4(2) of the Decree further provides that in sentencing offenders, a Court must have regarded to:
- (a) The maximum penalty prescribed for the offence;
  - (b) Current sentencing practice and the terms of any applicable and guideline Judgments;
  - (c) The nature and gravity of the particular offence;

- (d) The defender's culpability and degree of responsibility for the offence;
- (e) The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
- (f) Whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

13. Now I consider the aggravating factors:

1. The accused is the step father of the victim.
2. The accused seriously disregarded and breached the trust between him and the victim.
3. Accused was 48 years and victim was over 13 years old at the time of the incident.
4. The victim was threatened by the accused.
5. The victim was raped after 6 months of her mother's (de facto partner of the accused) demise.
6. The victim has suffered emotionally, physically and psychologically.
7. He has completely disregarded of the clearly defied societal, religious and traditional rules that prohibit sexual relationship between adult and children.
8. The accused upon having sexual intercourse with the victim took away her dignity in society and showed no concern for her future.

14. Now I consider the mitigating circumstances:

- (a) Accused looked after the victim.
- (b) Accused is 51 years old and looks after 03 children who are between the age of 9 and 16 years.
- (c) He is a first offender.
- (d) He is remorseful.

15. Considering all aggravated and mitigating circumstances I sentence you as follows:

- For the 1<sup>st</sup> count I take 12 years imprisonment as the starting point. I add 02 years for aggravating factors to reach the period of imprisonment at 14 years. I deduct 02 years for the mitigating factors.

- For the 2<sup>nd</sup> count I take 12 years imprisonment as the starting point. I add 02 years for aggravating factors to reach the period of imprisonment at 14 years. I deduct 02 years for the mitigating factors.

16. I order that you serve the sentence concurrently to each other. In summary you are sentenced to 12 years imprisonment.
17. Acting in terms of section 18(1) of the Sentencing and Penalties Decree, I impose 10 years as non-parole period.
18. 30 days to appeal.

P Kumararatnam  
**JUDGE**

At Suva  
11<sup>th</sup> April 2013