

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: 152 OF 2010

STATE

-v-

NAVEEN SINGH

Counsels : Mr. S. Babitu for the State
Mr. R. Kumar for the accused

Date of Hearing : 09 September 2013

Date of Sentence : 10 September 2013

(Name of the victim is suppressed. She is referred to as SW)

SENTENCE

1. The accused is before the Court for sentence, after being convicted to the following charges.

COUNT 1

Statement of Offence

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

Particulars of Offence

NAVEEN SINGH, on a day between the 1st day of October 2010 and the 31st day of October 2010 at **LAUTOKA** in the **WESTERN DIVISION**, used his finger to penetrate the vagina of **KW**, a 7 year old.

COUNT 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the **Crimes Decree, 2009.**

Particulars of Offence

NAVEEN SINGH, on a day between the 1st day of October 2010 and the 31st day of October 2010 at **LAUTOKA** in the **WESTERN DIVISION**, unlawfully and indecently assaulted **KW**, in that **NAVEEN SINGH** licked the vagina of **KW**, a 7 year old.

COUNT 4

Statement of Offence

RAPE: Contrary to Section 207 (1), (2) (a) and (3) of the **Crimes Decree, 2009.**

Particulars of Offence

NAVEEN SINGH, on a day between the 1st day of October 2010 and the 31st day of October 2010, at **LAUTOKA** in the **WESTERN DIVISION**, used his penis to penetrate the vagina of **KW**, a 7 year old.

COUNT 5

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1), of the **Crimes Decree, 2009.**

Particulars of Offence

NAVEEN SINGH, on the 1st day of November 2010 at **LAUTOKA** in the **WESTERN DIVISION**, unlawfully and indecently assaulted **KW**, in that **NAVEEN SINGH** touched the vagina of **KW**, a 7 year old, with his finger.

COUNT 6

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1), of the **Crimes Decree, 2009.**

Particulars of Offence

NAVEEN SINGH, on the 1st day of November 2010 at **LAUTOKA** in the **WESTERN DIVISION**, unlawfully and indecently assaulted **KW**, in that **NAVEEN SINGH** kissed the vagina of **KW**, a 7 year old.

COUNT 7

Statement of Offence

RAPE: Contrary to Section 207 (1), (2) (a) and (3) of the **Crimes Decree, 2009**.

Particulars of Offence

NAVEEN SINGH, on the 1st day of November 2010 at **LAUTOKA** in the **WESTERN DIVISION**, used his penis to penetrate the vagina of **KW**, a 7 year old.

2. You pleaded not guilty to above charges. Following trial lasting four days in this Court, you were found guilty on above counts against you.
3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur with the verdict of the assessors and found you guilty of the above charges.
4. The following facts were proven in evidence during the trial. The 7 year old victim KW was living in the front house and used to come to your house to watch movies. You have taken her to the wash room and the store room during the period 1st October 2010 to 1st November 2010 on several occasions and had raped her, had sexually abused her. From the evidence it is clear that you breached the relationship between neighbors and had forced the child to have sexual acts with you.
5. You had no remorse for your above conduct.
6. According to the Victim Impact Statement filed, there is change in the behavior of the victim after these incidents and it had affected her studies.
7. According to the Crimes Decree, the maximum punishment for rape is Imprisonment for life. It is a serious offence. The tariff for rape is well settled since the Judgment of then A.H.C.T. Gates J in **State v Marawa**. [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.

8. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”

9. The tariff for the rape of children differs from that of adult and takes the tariff of 10 to 15 years.

10. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Madigan J held that:

“Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

11. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Nawana J held that:

“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”

12. Considering the above, I commence your sentence at 12 years imprisonment for each charge of Rape.

13. Aggravating factors;

- (a) Victim is your neighbor, you breached the trust between neighbors
- (b) There are several incidents of rape and indecent assault
- (c) You are not remorseful
- (d) The victim's life had changed and her education affected.

Considering all I increase your sentence by 3 years now the sentence is 15 years imprisonment.

14. Mitigating circumstances

- (a) You are first offender
- (b) Time period in remand –98 days.

Considering all I reduce 2 years from your sentence now your sentence is 13 years imprisonment.

15. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 11 years as non parole period.

16. The tariff for the offence of Indecent assault is between 1 to 4 years imprisonment as decided in **Ratu Penioni Ratoka v State** HAA 68 of 2002.

17. I start the sentence for each charge of indecent assault at 2 years and add 2 years for the aggravating factors mentioned above and deduct 1 year for the mitigating factors.

18. For each charge of indecent assault, I sentence you for a period of 3 years

Summary

19. Your sentences are as follows:

- (i) 1st count of Rape - 13 years
- (ii) 2nd count of Indecent assault - 3 years
- (iii) 4th count of Rape - 13 years
- (iv) 5th count of Indecent assault - 3 years
- (v) 6th count of Indecent assault - 3 years
- (vi) 7th count of Rape - 13 years

20. Considering the totality principle, I order all the sentences to run concurrently.

21. You are sentenced to 13 years imprisonment. You will not be eligible for parole until you complete serving 11 years of imprisonment.

22. 30 days to appeal to Court of Appeal.

Sudharshana De Silva
JUDGE

On 10th September 2013
At Lautoka

Solicitors for the State:
Solicitors for the Accused:

Office of the Director of Public Prosecution
Legal Aid Commission