

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 11 OF 2016

STATE

V

RAJNIL NAVIN CHANDRA

Counsels : Ms. A. Vavadakua for State  
Mr. K. Ratule for Accused

Hearing : 21, 22 and 23 November, 2016

Summing Up : 24 November, 2016

Judgment : 24 November, 2016

Sentence : 25 November, 2016

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## SENTENCE

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- [1] **Rajnil Navin Chandra**; after being convicted on a count of Rape, contrary to Section 207(1), (2) (a) of the Crimes Decree No. 44 of 2009, you are to be sentenced by this Court.
- [2] You pleaded not guilty to above charge. The ensuing trial lasted for 4 days in this Court; during which, the complainant, her mother and the medical officer who

examined her her gave evidence for the prosecution while you offered evidence under oath claiming it was consensual intercourse.

[3] At the conclusion of trial; having reviewed the evidence and its summing up to the assessors, this Court decided to accept their unanimous opinion and found you guilty and convicted you as charged.

[4] The following facts were proved during the trial:

(i) *The 22 year old complainant was employed by your mother in her shop. On 17<sup>th</sup> March 2016, the complainant was invited by your mother into her house to help her with some house work. After her work, when she was to return home, you took her in your vehicle to drop her. Instead you took her to your house ignoring her pleas to let her get off.*

(ii) *Upon reaching your house, you forcefully removed her clothes and inserted your penis into her vagina in the vehicle. You gave a piece of cloth to wipe blood from her vagina. Before dropping her off that evening you promised to marry her.*

(iii) *She returned to her house and reported the matter to her mother. Her mother then reported the matter to Police.*

(iv) *Her marriage which was to take place in December 2016 has been put on hold due to this incident.*

[5] According to Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. It is a serious offence.

[6] The tariff for Rape of an adult is a term of imprisonment ranging from 7 years to 15 years as per **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; of 27 May 1994.

[7] In the same judgement, the Court of Appeal observed thus:

*"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."*

- [8] In determining the starting point within the said tariff, Goundar J, in *Koroivuki v The State* [2013] FJCA 15 has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".*

- [9] Considering the nature of offending, and in the light of the above guiding principles, I commence your sentence at 10 years of imprisonment for the count of Rape.

- [10] The aggravating factors are:

- a. *significant degree of opportunistic planning;*
- b. *taking advantage of the victim's vulnerability;*
- c. *display of total disregard to the victim's wellbeing;*
- d. *the significant age gap between the complainant and the accused;*
- e. *breach of trust;*
- f. *continuing psychological trauma of the victim.*

- [11] I add 3 years and 6 months on your sentence on the above aggravating factors. Now your sentence is 13 years and 6 months.

- [12] The mitigating factors of the accused is limited to your co-operation with the Police during the investigations. The mention of the facts that you are a first offender and possess previous good character in your mitigation submissions will be ignored by this Court as you admit the three previous convictions, which were in relation to offences involving some degree of violence on victims. Your Counsel was apprised of

this factor only this morning when the learned State Counsel tendered your previous conviction record.

- [13] I deduct 6 months for the above mitigating factor. Now your sentence is 13 years.
- [14] You were in remand for this case only for a day and therefore no deduction on the period spent in remand.
- [15] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose a 10 year period as non-parole period.
- [16] Your final sentence is as follows:

**Head Sentence - 13 years**  
**Non parole period - 10 years**

- [17] You have 30 days to appeal to the Court of Appeal.



ACHALA WENGAPPULI

JUDGE



At Labasa

25 November, 2016

Solicitor for the State : Office of the Director of Public Prosecution, Labasa  
Solicitor for the Accused : Office of Gibson and Company, Barrister & Solicitor,  
Labasa