

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO.: HAC 91 of 2013**

STATE

-v-

AJIT SINGH

Counsel : Ms. A. Datt for the State  
Ms. J. Lagi for the Accused

Date of Judgment : 7<sup>th</sup> April, 2016

Date of Sentence : 19<sup>th</sup> April, 2016

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

**SENTENCE**

[1]. On 7<sup>th</sup> April 2016, Mr. Ajit Singh (Accused) was convicted on following counts and comes before this Court for sentence.

**FIRST COUNT**

**[REPRESENTATIVE COUNT]**

**Statement of Offence**

**ABDUCTION OF A YOUNG PERSON UNDER 18 YEARS OF AGE WITH TEND TO HAVE CARNAL KNOWLEDGE:** Contrary to section 211 of the Crimes Decree No.44 of 2009 and section 70(3) of the Criminal Procedure Decree No. 43 of 2009.

### **Particulars of Offence**

**AJIT SINGH** between the 1<sup>st</sup> day of November 2011 and the 31<sup>st</sup> day of May 2012 at Ba, in the Western division, with intent that **SP**, being unmarried and being under the age of 18 years, be unlawfully and carnally known by **AJIT SINGH**, took the said **SP** out of the possession and against the will of her aunty, **PRABHA WATI** on more than one occasion.

### **SECOND COUNT**

#### **[REPRESENTATIVE COUNT]**

#### **Statement of Offence**

**RAPE:** Contrary TO SECTION 207 (1) AND (2) (a) of the Crimes Decree NO. 44 of 2009 and section 70(3) of the Criminal Procedure Decree No. 43 of 2009.

### **Particulars of Offence**

**AJIT SINGH** between the 1<sup>st</sup> day of November 2011 and the 31<sup>st</sup> day of May 2012 at Ba, in the Western Division, penetrated the vagina of **SP** with his penis without her consent on more than one occasion.

### **THIRD COUNT**

#### **Statement of office**

**RAPE:** Contrary TO SECTION 207 (1) AND (2) (a) of the Crimes Decree NO. 44 of 2009

### **Particulars of Offence**

**AJIT SINGH**, on the 17<sup>th</sup> day of April 2013 at Ba, in the Western Division, penetrated the vagina of **SP** with this penis without her consent.

### **FOURTH COUNT**

#### **Statement of Offence**

**COMMON ASSAULT:** Contrary to section 274 of the Crimes Decree No. 44 of 2009

## Particulars of Offence

**AJIT SINGH** on the 16<sup>th</sup> day of April 2013, at Moto, Ba in the Western division unlawfully assaulted **SP**.

[2]. The facts of the case were that:

Accused, a cane cutter, wanted underage victim to be his girlfriend. She refused. Then he made series of threatening calls over the phone and forced her to meet him in a hotel in Ba. Complainant finally succumbed to his threats and went, on two occasions, to the hotel he booked. He knew Complainant was under the age of 18 and he forced her to come to the hotel twice with the intention of having sexual intercourse. He did not inform her father or aunt before going to the hotel. On both occasions, he had sexual intercourse with her without her consent. In April 2013 he entered her house forcibly, threatened and punched her. Then he had sexual intercourse with her without her consent. Victim was fifteen years old in 2011 when the first incident happened. Accused was 24.

At the cautioned interview, Accused admitted having threatened her. He also admitted that he knew she was only 15 when they first went to the Ba Hotel. Accused admitted in Court that he had sexual intercourse with the Complainant on three occasions.

## Abduction

- [3]. Maximum penalty for the offence of Abduction of a young girl under 18 years of age with intent to have carnal knowledge is five years' imprisonment.
- [4]. Delivering the appeal judgment in ***The State v Shiwan Kartik*** (Criminal Case No. HAA 003/12) Justice Madigan stated the tariff for the offence. At paragraph [5] of the Judgment, Justice Madigan laid down the tariff from 12 months to 3 years.
- [5]. In ***Shiwan Kartik*** (*supra*) the accused and the victim had known each other and wished to marry each other when the victim was of legal age. Justice Madigan selected a starting point of 3 years. The age difference was 6 years and the victim had willingly gone with the accused to spend the night with the accused.



- [6]. In the present case, the victim did not willingly go with the defendant to the hotel. She was coerced by the defendant into accompanying him on each occasion. The victim and the defendant did not know each other from before and the victim had no intention to marrying the defendant.

### **Rape**

- [7]. The maximum penalty for Rape is life imprisonment.
- [8]. It is now well settled, and confirmed by the Supreme Court in Anand Abhay Raj CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment.
- [9]. In Raj (*supra*), the appellant sought leave to appeal against a sentence of 16 years with a non-parole period of 12 years for the offence of 'Rape' of his step-daughter. In dismissing the application (unanimously), the Justice Madigan stated the following at paragraph [18]:

*"Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years"*.

- [10]. Supreme Court upheld the judgment of the Court of Appeal, and at paragraph [66] the Chief Justice Anthony Gates endorsed the remarks of the Justice Madigan mentioned above.

### **Starting Point**

- [11]. Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders. In State v Tauvoli [2011] FJHC 216; HAC027.2011 (18 April 2011) Madigan J observed:

*"Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has 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"*.

- [12]. In State v AV [2009] FJHC 24; HAC 192 21.02.2009 it was stated that:

*"rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assault on children...Sexual offenders"*

[13]. Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

[14]. In the case of Mohammed Kasim v State [1994] FJCA 25;AAU 0021j.93S (27 May 1994) it was stated that;

*“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”.*

[15]. In Raj (*supra*), the accused was the step father of the victim and their age difference was approximately 28 years. The victim was subjected to rape on four occasions over a period of just over 1 year. Victim was 10 years old at the time of the first offending. The Learned Sentencing Judge had selected a starting point of 12 years for each of the 4 representative counts.

[16]. The circumstances of offending in the present case are slightly different from those in Raj (*supra*). In this case there was no relationship between the victim and the accused. The age difference between the two here was approximately 7 years. The victim was approximately 16 old around the time of the first offending.

[17]. Having considered the gravity of the offence, culpability of the offending and its impact on the victim, I pick ten (10) years as the starting point at the bottom of the tariff band for each Rape count.

### **Common Assault**

[18]. The maximum penalty for the offence of ‘Common Assault’ under section 274 of the Crimes Decree is 1 year imprisonment.

[19]. As per The State v Saini Pinau & Two Others (*Crim. case No. 012 of 2013*) There is no set tariff for this offence Sentencing Court has the discretion.

[20]. Accused had punched and slapped the victim but there were no injuries disclosed.



### **Aggravating Circumstances**

- [21]. Accused was aware of the vulnerable situation victim was in. He exploited her vulnerability.
- [22]. The defendant had used different modes of threats, on different occasions, to get the victim to agree to his lustful demands including threatening to harm the victim's father and her aunt, and later threatening to defame the victim by telling her school principal and her father that she had slept with the defendant.
- [23]. According to the Victim Impact Statement and filed, victim has suffered physically and psychologically. She was depressed and could not concentrate on her studies. She suffered injuries. Offending left a scar and trauma for the rest of her life as a medical student.
- [24]. The accused did not show genuine remorse by not admitting the offences. He did not save the complainant from giving evidence of sexual nature which would have been a distasteful experience for her.

### **Mitigating Circumstances**

- [25]. Accused cooperated with police. According to the mitigation submission, he is 26 and sole bread winner of the family earning \$ 50 per week as a cane cutter. He is living with his father who is seriously ill.
- [26]. Accused has previous convictions during the period of past ten years. Those convictions have nothing to do with sexual offences. However, I am not inclined to give any discount on his good character.
- [27]. Accused has tendered his father's medical report. I considered his youth, and his father's medical condition in selecting the non- parole period.
- [28]. Accused was in remand for a period of five months.

### **Sentence**


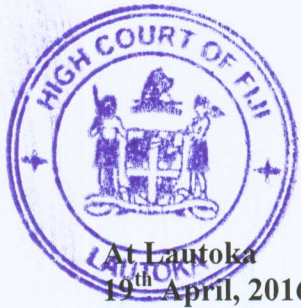
- [29]. I impose a sentence of three years' imprisonment for the abduction charge.
- [30]. For each Rape count, which are the head counts, I add two years to the above stated starting point bringing the interim sentence to twelve years imprisonment. I deduct two years for mitigating factors. Now his sentence is ten years imprisonment for each Rape count.
- [31]. For Common Assault count, I impose a sentence of three months.

[32]. According to the report filed by the State, Accused had spent nearly five months in remand. Having considered the time he spent in remand, period five months is deducted from his sentence pursuant to Section 24 of the Sentencing and Penalties Decree. Now his final sentence is nine years and seven months' imprisonment.

[33]. Considering Section 18 (1) of the Sentencing and Penalties Decree and his youth, father's medical condition and his willingness to rehabilitate, I impose a non-parole period of seven years.

[34]. All the sentences to be served concurrently.

[35]. 30 days to appeal to the Fiji Court of Appeal.



**Aruna Aluthge**  
Judge

**Counsel:**

- **Office of the Director of Public Prosecution for State**
- **Legal Aid Commission for Accused**