

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 163 OF 2013

STATE

-v-

VINIT VIKASH CHAND

Counsel : Mr. Seruvatu with Ms. Kiran for State  
Ms. P. Chand with Ms. Singh for the Accused  
Date of Judgment : 27<sup>th</sup> September, 2017  
Date of Sentence : 9<sup>th</sup> October, 2017

*(Name of the Complainant is suppressed. He is referred to as R)*

SENTENCE

1. Mr. Vinit Vikash Chand, you were charged on following information and convicted after a fully defended trial.

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

VINIT VIKASH CHAND on the 08th of July, 2013 at Nadi in the Western Division, inserted his penis into the mouth of R, an 8 year old boy.

SECOND COUNT

Statement of Offence

ATTEMPT TO COMMIT RAPE: Contrary to Section 208 of the Crimes Decree 44 of 2009.

Particulars of Offence

VINIT VIKASH CHAND on the 08th of July, 2013 at Nadi in the Western Division, attempted to insert his penis into the anus of R, an 8 year old boy.

2. You now come before this Court for sentence.
3. On the 8<sup>th</sup> of July, 2013, you accompanied the Complainant to help him sell coriander or dhania for his pocket money. Complainant is your cousin. You took Complainant to a mango tree and asked him to suck your penis. When Complainant was trying to run away, you forcefully opened his mouth and inserted your penis into his mouth. Then, you spat in Complainant's anus and forced him to sit on your erected penis. In the police interview, you voluntarily admitted making Complainant suck your penis and rubbing your erected penis on his anus.
4. The maximum penalty for Rape is life imprisonment.
5. Tariff for juvenile rape is now well settled. The Supreme Court in Anand Abhay Raj CAV003.2014 confirmed that the tariff for rape of a juvenile should be 10-16 years' imprisonment.
6. Rape is a serious crime. By prescribing life imprisonment for Rape, the law makers expect courts to impose harsher punishment on rape offenders. Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji. Courts and the society cannot condone any form of sexual assault on children.

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. Therefore, the main purposes of your sentence are special and general deterrence and denunciation. However, I am mindful of your youth and chances of rehabilitation.

7. The maximum punishment for the offence of attempt to commit rape is 10 years' imprisonment.
8. The tariff for the offence of Attempt to Commit Rape ranges from 1 year to 5 years' imprisonment.
9. In Jioji Aunima v The State, criminal appeal no. HAA 033 of 2001 (27 June 2001) Shameem J. stated:-

*"Applying all these principles, I find that the accepted tariff for Attempted Rape in the Fiji Courts ranges from 12 months imprisonment to 5 years imprisonment. A starting point should then be chosen according to the seriousness of the offending.*

10. In Rusiate Bulimaitwai v The State, criminal appeal no. HAA 0068 of 2005, Shameem J. mentioned the various factors which would result in higher sentences as follows:

*"... In Jioji Aunima v. State, criminal appeal 33 of 2000, I identified the tariff for attempted rape as being 12 months imprisonment to 5 years imprisonment. Sentences at the upper end of the tariff should be imposed where gratuitous violence is inflicted, where a weapon is used, where there is a gross breach of trust or where there is a large age gap between the complainant and the offender. In Hari Chand v State (supra) I upheld a 3 year term for the attempted rape of his daughter-in-law by the offender. There was no gratuitous violence but there was a gross breach of trust."*

11. You used force on a young child who placed much trust on you as his elderly cousin. The offending is very serious. Having considered the seriousness of the offence and the harm caused to the young complainant, I pick ten (10) years' imprisonment as the starting point for the Rape count. For the count of Attempt to Commit Rape, I pick a starting point of 3 years' imprisonment.

12. **Aggravating Circumstances**

- Your father asked you to help the Complainant to sell coriander trusting you as Complainant's elderly cousin. You breached that trust.
- Complainant was 8 years old when the offence was committed. The age gap between you and the Complainant was 13 years.
- According to the Victim Impact Statement filed, Complainant has suffered psychologically.
- You have not saved the young boy from giving evidence and reliving the ordeal.

13. **Mitigating Circumstances**

- You admitted the offence at the police interview and co-operated with police.
- You are a first offender and have maintained a clear record thus far.

14. You were only 18 years' old at the time of the offence. You are employed by a private transport company. You are the sole breadwinner of the family looking after elderly parents. It is unfortunate that you have committed this offence at such a young age ruining the rest of your life.

15. For Rape count, I add 2 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 12 years' imprisonment. I deduct 2 years for mitigating factors bringing the sentence to one of 10 years' imprisonment. You had been in remand for 40 days. I deduct further 40 days to reflect your remand period. Your final sentence for Rape count is 9 years 10 months and 20 days' imprisonment.

16. For Attempt to Commit Rape, I add 2 years for aggravating features and deduct one year for mitigation bringing the final sentence to 4 years' imprisonment.

17. You are a young and first offender. I considered your personal circumstances and chances of rehabilitation as a young and first offender. The purposes of sentencing set out in Section 4(1) should be considered with particular reference to rehabilitation on the one hand and deterrence on the other. As a result, the

non-parole term should not be so close to the head sentence as to deny or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent See: Tora v State [2015] FJSC 23; CAV11.2015 (22 October 2015). In view of the foregoing, I, acting under Section 18(1) of the Decree and the decision of Tora (*supra*) order that you shall not be eligible for parole until you serve a term of 8 years imprisonment.

18. Having considered the principles of totality and one-transaction, I order both sentences to be served concurrently.

19. Summary

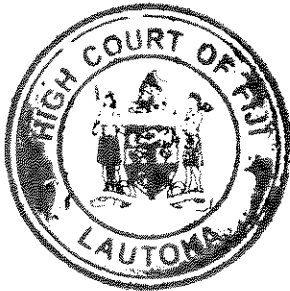
1<sup>st</sup> Count (Rape) - 9 years 10 months and 20 days' imprisonment

2<sup>nd</sup> Count (Attempt to Commit Rape) - 4 years' imprisonment.

Both sentences to be served concurrently

You are eligible for parole after serving 8 years in prison.

20. 30 days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

At Lautoka

9<sup>th</sup> October, 2017

Counsel:

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