

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 344 OF 2016S

STATE

vs

RAJINESH KAMAL NARAYAN

Counsels : Mr. L. Bogitini for the State
Mr. T. Ravuniwai for the Accused
Hearings : 3, 4, and 5 April, 2018
Summing Up : 6 April, 2018
Judgement : 6 April, 2018
Sentence : 9 April, 2018

SENTENCE

1. In a judgment delivered on 6 April 2018, the court found you guilty and convicted you on the following information:

Statement of Offence

RAPE: *Contrary to section 207 (1) and (2)(a) of the Crime Act 2009.*

Particulars of Offence

RAJINESH KAMAL NARAYAN *on the 13th of September, 2016 at Suva, in the Central Division penetrated the vagina of A. A. P with his penis without her consent.*

2. The brief facts were as follows. On 13 September 2016, you were 33 years old, married with three young daughters. You drove taxis for a living. In fact, you were driving taxis with the complainant's father (PW2), and knew her family well. The complainant (PW1) was 16 years old, at the time. You befriended her, drove her around in your taxi and won her confidence. You even bought her a mobile phone, to enable you to access her. Despite her father's opposition to you forming a relationship

with her, you took her in your taxi on 13 September 2016 to Suva Point, and force yourself on her. You locked the taxi doors and windows, went to the back seat where the complainant was sitting, forcefully took off her pants and panty, then raped her. The matter was reported to police. You were later charged with rape, tried and convicted accordingly.

3. The rape of children is always a serious matter, and Parliament had prescribed a maximum sentence of life imprisonment for the same: section 207 (1) of the Crime Act 2009. The Supreme Court of Fiji had set the tariff of 10 to 16 years imprisonment for the rape of children: see Anand Abhay Raj v The State, Criminal Appeal No. CAV 0003 of 2014. Of course the final Sentence will depend on the aggravating and mitigating factors.

4. In this case, the aggravating factors were as follows:

- (i) Taking Advantage of a Naïve and Vulnerable Young person. You were 33 years old, married with three young daughters on the day of the incident, that is, 13 September 2016. The complainant was 16 years old, and the eldest in a family of three girls. You knew the complainant's father and family, as you were working in the same taxi company, and drove taxis together. You actively befriended the complainant, despite her father's disapproval. You knew there was a 17 years age gap between you and the complainant. You bought her a mobile phone to enable you to access her as and when you please. You encouraged her naivety by proposing to be her boyfriend. You took her to Suva Point on the night of 13 September 2016. You locked the taxi doors and windows, and forced yourself on her. You had sexual intercourse with her without her consent, and you knew she was not consenting to the same, at the time. On the night in question, you took away her virginity. You should not complain when your liberty is taken away to pay for your crime.
- (ii) Being 16 years old, the complainant, in terms of section 163 of the 2013 Fiji Constitution, is still a child. Thus, this is a case of the rape of a child. The court had said in the past and will say again that it will not tolerate the abuse of children, the future of this country. It will keep on passing long prison sentences, as warning to would be child rapist.
- (iii) By offending against the complainant, you had no regards to her right as a child, no regard to her right as a human being and no regards to her right to live a peaceful and happy life.

5. The mitigating factors were as follows:

- (i) At the age of 33 years old, you have not offended in the last 10 years.
- (ii) You had been remanded in custody for approximately 46 days.

6. I start with a sentence of 10 years imprisonment. I add 3 years for the aggravating factors, making a total of 13 years imprisonment. For being remanded in custody for 46 days, I deduct 2 months, leaving a balance of 12 years 10 months. For not offending in the last 10 years, I deduct 1 year 10 months, leaving a balance of 11 years imprisonment. I sentence you to 11 years imprisonment.

7. Mr. Rajinesh Kamal Narayan, for raping the complainant on 13 September 2016 at Suva in the Central Division, I sentence you to 11 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.

8. Pursuant to Section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner which was just in all the circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and community denounce what you did to the complainant on 13 September 2016.

9. The name of the female complainant is permanently suppressed to protect her privacy.

10. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva.
Solicitor for Accused : Mr.T. Ravuniwa, Barrister and Solicitor, Suva.