

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 155 OF 2015

BETWEEN:

THE STATE

AND:

GANGA RAM

Counsel: Mr S Seruvatu for the State
Ms S Veitokiyaki & Mr J Prakashan for the Accused

Date of Hearing: 21-22 May 2018
Date of Judgment: 22 May 2018
Date of Sentence: 24 May 2018

SENTENCE

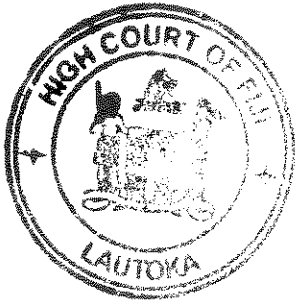
- [1] Ganga Ram, this Court found you guilty of rape contrary to section 207(1) and 2(a) of the Crimes Act. The charge was a representative count. Effectively you have been convicted of one incident of rape. Your punishment will reflect one incident of rape.
- [2] The incident occurred between July 2010 and December 2010. The victim was in high school at the material time. She was going to turn 18 years old in December of that year. The facts are as follows. The victim is your niece. Her father is your first cousin. You and the victim lived in the same settlement in Namata, Sigatoka. She lived with her parents and three other siblings. She is the eldest. Her home was a walking distance from your

home. You had arranged with her father to allow her to do chores at your home after school, in the weekends and school holidays. In return you were going to compensate her with school bus fares. The victim could not recall the details of each incident but she said that between July 2010 and December 2010 you forced her to have sexual intercourse with you. You threatened her that you would kill her if she reported the incident to anyone. She did not report to anyone until May 2011 when a neighbour prodded out of her whether she was pregnant. She implicated you. Her family came to know about it and the matter was reported to police.

- [3] In your evidence, you gave the Court an impression that you consider yourself the victim. You were seduced by her and you fell into temptation to have sexual relationship after she turned 18 in December 2010. You admitted having intercourse with her once in January 2011. You admitted you were responsible for her pregnancy. Your account that the victim led you to have a sexual relationship was rejected by the Court. She was your niece and a high school student, inspiring to continue further studies. You were a matured man, twice her age. Instead of protecting her, you sexually abused her in pursuit of your lust.
- [4] There is very little evidence of remorse from you. You are now 50 years old and married. Your counsel has informed the Court that you are the advisory councilor of your district and a pastor, actively involved in charity, promoting welfare of your community and prison counselling. However, these factors carry little weight in sentencing for rape.
- [5] Your counsel has also placed emphasis on your good character and on you being a first time offender. The Court cannot treat you as a first time offender. On 12 November 1992, you were convicted of murder and sentenced to mandatory life imprisonment. Your appeal to the Court of Appeal was dismissed and your conviction for murder was affirmed by the Court of Appeal (*Ram v State* [1992] FJCA 15; AAU0012u.91s (24 August 1992)). You were released from prison on 24 May 2002. The Court has not been informed of the circumstances of your release from prison. If you were released on licence on conditions, then you may be liable to be returned to prison to serve your remaining life in prison. That is a matter for the State to consider. As far as this case is concerned, the Court gives little weight to your previous good character.

- [6] Your remand period is about 3 weeks. A downward adjustment is made to reflect your remand period. There is also a pre-charge delay of 4 years by the State in charging you and a systematic post-charge delay of about 3 years in trying you. Some concession is made to reflect delay.
- [7] The gravity of the offence of rape is reflected in its maximum penalty. It is life imprisonment. In *Kasim v State* [1994] FJCA25; Aau0021j.93s (27 May 1994), the Court of Appeal recommended a starting point of 7 years imprisonment. However, recently, in *Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018), the Supreme Court said at [40]:
- Kasim was decided in 1994. Tariffs for sexual offences and specially rape have moved upwards as befits such a serious offence under the Crimes Act, and which in turn reflects the community's increasing yet justified sense of outrage and horror for the crime. Presently the tariff for rape of an adult has been set between 7 and 15 years imprisonment - State v. Marawa [2004] FJHC 338. In really bad cases the tariff may have to be exceeded. (per Gates CJ)*
- [8] Rape is indeed such a serious offence that a custodial sentence is inevitable to deter and denounce the offence. Rehabilitation plays a less significant role in the punishment for rape.
- [9] In your case, the aggravating factors are overwhelming. The victim was a young girl who came from a poor family. You breached her trust and destroyed her aspiration to study and her future. She gave birth to a child in 2011 and decided to keep him. The child is in Year 1 this year. She did not pursue further studies. She is now 26 years old. She is not married. Cultural stigma may prevent her from finding a loving and permanent relationship. She stays home with her parents. The impact of your crime on the victim has been severe.

[10] Taking all these factors into account, the Court sentences you to 13 years' imprisonment with a non-parole period of 10 years.



Daniel Goundar

JUDGE

At Lautoka

24 May 2018

Solicitors:

Office of the Director of Public Prosecutions for the State
Pillai, Naidu & Associates for the Accused