

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 107 OF 2014**

STATE

v

ATISH NATH SHARMA

Counsel: Mr. S. Seruvatu for State  
Mr. A.R. Singh for Accused

Date of Judgment: 24<sup>th</sup> July, 2018

Date of Sentence: 6<sup>th</sup> August, 2018

**SENTENCE**

1. Mr. ATISH NATH SHARMA, you were convicted on following count after a full defended trial.

*Statement of Offence*

**RAPE**: Contrary to Section 207 [1] and [2] [a] of the Crimes Decree 44 of 2009.

*Particulars of Offence*

ATISH NATH SHARMA between the 9th day of August, 2014 to 10th day of August, 2014 at Nadi in the Western Division, penetrated the vagina of **PREETI POOJA SHARMA**, with his penis without the consent of the said **PREETI POOJA SHARMA**.

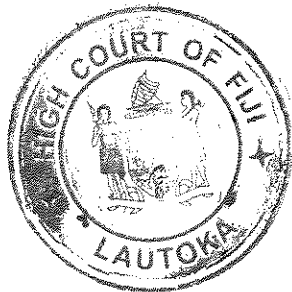
2. The assessors unanimously found you guilty of Rape as charged. The Court accepted the opinion of assessors and convicted you accordingly.
3. From the evidence led in trial it is clear that the complainant visited you on that fateful day to celebrate '*Rakshabhandan*' and to tie a knot on you because you are her cousin. You invited her to accompany you to the *Bula* Festival which she accepted. However, you took her to a club and insisted her to drink alcohol. Then you took her to *Wailoaloa* beach and offered more alcohol which she did not drink. When she wanted to go home, you pulled her right hand, grabbed her from her shoulders and pushed her down to the sand. Then you inserted two fingers into her vagina. Eventually you inserted your penis into her vagina and had sexual intercourse for 10- 15 minutes without her consent.
4. The maximum penalty for Rape is life imprisonment. The Courts have made it clear that rapists will not be dealt with leniently. Rape is generally regarded as the most serious sexual offence. It violates and disregards the dignity and sexual autonomy of a fellow human being. As was indicated in the Victim Impact Statement and her evidence, the physical and emotional suffering to the complainant is likely to be severe. This heinous crime is prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. Not only the offender but potential offenders must be deterred. The offender must be severely punished to ensure safety and security of all women.
5. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
6. The tariff for rape of an adult is well settled. As the Counsel for prosecution has submitted, without aggravating and mitigating factors, the starting point is seven years' imprisonment (*Kasim v The State* (Crim App. No. AAU0021j of 1993S) and the tariff is set between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
7. You have used a degree of force and had caused some injuries in complainant's vagina. Having considered the objective seriousness of the offence, and principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 8 years' imprisonment as the starting point.

8. In this case there are some aggravating features that could be seen as possibly justifying an increase of the sentence. I considered following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in *Ram v State* [2015] 26; CAV 12.2015 (23 October 2015).
9. The complainant agreed to accompany you to the *Bulla Festival* without a shadow of doubt about your sincerity because she is your cousin. You breached that trust when you committed this offence. You were 36 years old while the complainant was only 19 years old at the time of the offence. Furthermore, she was quite vulnerable when she was alone with you in a beach close to midnight. You have exploited her vulnerability. You were drunk and you imposed alcohol on her. I consider your drunkenness and your insistence on the complainant to drink alcohol before committing the offence as an aggravating factor.
10. There is evidence that you had inserted two fingers in complainant's vagina without her consent. For reasons unknown to this court, you have not been charged for the digital penetration. Therefore, I do not intend to punish you for an offence for which you were not convicted. However I consider the digital penetration as an aggravating circumstance of this case.
11. I have considered the mitigating circumstances that your Counsel has submitted to this Court. You are a 39 year old father of a son who is four years old. You are self-employed and the sole breadwinner of your family. I have considered your personal circumstances although they have a very little value in mitigation. You have cooperated with police during investigations.
12. You are a first offender and have maintained a clear record in the past.
13. I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 11 years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence to one of 10 years' imprisonment.

14. According to the submission filed by your Counsel, you had been in remand nearly for a month. I deduct further one month to reflect your remand period. Now your final sentence is 9 years and 11 months imprisonment.
  
15. I have considered your rehabilitation potential as a first offender in determining your non-parole period. Considering Section 18 (1) of the Sentencing and Penalties Act, and principles enunciated in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non-parole period of 8 years.

**Summary**

16. You are sentenced to 9 years and 11 months imprisonment. You are eligible for parole after serving 8 years in prison.
  
17. 30 days to appeal to the Fiji Court of Appeal.



**Aruna Aluthge**

**Judge**

**At Lautoka**

**6<sup>th</sup> August, 2018**

**Counsel:**

**Office of the Director of Public Prosecution for State**

**Aman Ravindra- Singh Lawyers for Accused**