

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 160 OF 2016

BETWEEN : STATE

AND : RAJIV KUMAR

Counsel : Mr. J. Niudamu for State
Ms. K. Vulimainadave for the Accused

Date of Hearing : 28th and 29th of May, 2019

Date of Closing Submissions : 29th of May, 2019

Date of Summing Up : 30th of May, 2019

Date of Judgment : 30th of May, 2019

Date of Sentence : 31st of May, 2019

SENTENCE

1. Mr. Rajiv Kumar, you stand convicted to one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment
2. It was proved during the course of the hearing that you have taken the complainant to a party, where you forced her to drink beer mixed with whisky. Once she got drunk and lost her consciousness, you had taken her to your official quarters and inserted your penis into her vagina without her consent. You were the head chef of

the Resort while the complainant was a trainee chef who worked under your supervision.

3. Rape is one of the most humiliating and distressing crimes. It not only violates the physical self of a person, but also destroys the personal dignity and self-autonomy of a person. Therefore, rape is a serious offence.
4. I now turn my attention to consider the purpose of this sentence. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the society denounce such crimes without any reservation.
5. The tariff to the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.
6. It was proved during the course of the hearing that the complainant had joined the resort as a trainee chef a week prior to this incident. After this incident, she had to left the employment and go back to her home in Suva. Therefore, I find the harm of this offending is high.
7. You have forced the complainant to drink beer mixed with whisky. It was you that invited her to go to the drinking place. When the complainant was reluctant to go without informing her cousin, which whom she stayed while attending to her employment at the Resort, you have lured her into the drinking place, saying that you have informed the wife of her cousin. Once she got drunk and lost her consciousness, you have taken her into your official quarters instead of dropping her

at her cousin's place. The evidence of Setareki confirms that you have pulled and dragged her into your room when she fell down and looked lifeless at the quarters. In view of these facts, it is clear that this is premeditated act, which you have planned and carried out in order to satisfy your sexual gratification without having any remorse to this new young employee who recently started her career under your supervision. Therefore, I find the level of culpability in this offending is substantially high.

8. You have breached the trust that the complainant had in you as the head chef by committing this offence. Actually, you have abused your position and her vulnerability as a trainee chef who worked under you by forcing her to drink beer mixed with whisky and then raping her in a disgraceful manner. By committing this crime, you have completely shattered and destroyed her future where she could have become a chef in the hotel industry. I find these facts as aggravating factors.
9. The learned Counsel for the defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
10. Section 4 (2) (i) of the Sentencing and Penalties Act states that the sentencing court must consider the previous character of the offender. Section 5 of the Sentencing and Penalties Act has provided the factors that could be taken into consideration in determining the previous character of the offender, where it states that:

"In determining the character of an offender a court may consider (amongst other matters)-

- i) *the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions recorded against the offender;*
- ii) *the general reputation of the offender; and*

iii) *any significant contributions made by the offender to the community, or any part of it.*

11. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. You have no record of any previous convictions. However, it is obvious that you must have a clean record of previous character in order to obtain an employment as a head chef in the hotel industry. You have used and abused your position in order to commit this crime. In view of these factors, I give you a meager discount to your previous character.
12. Having taken into consideration above discussed reasons, I sentence you to a period of twelve (12) years imprisonment to the offence of Rape as charged.
13. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find ten (10) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

14. Accordingly, I sentence you for a period of **twelve (12) years** imprisonment to the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act. Moreover, you are not entitled to any parole for a period of **ten (10) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

15. You have been in remand custody for this case for a period of nearly twenty one (21) days as you were not granted bail by the court. In pursuant of Section 24 of the

Sentencing and Penalties Act, I consider the period of **one (1) month** as a period of imprisonment that have already been served by you.

16. Accordingly, the actual sentencing period is **eleven (11) years and eleven (11) months** imprisonment with non-parole period of **nine (9) year and eleven (11) months**.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.



R. D. R. Thushara Rajasinghe

Judge

At Lautoka

31st May, 2019

Solicitors : Office of Director of Public Prosecution
Office of the Legal Aid Commission