

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 09 of 2016

BETWEEN : STATE

AND : JAINENDRA NARAYAN PAL

Counsel : Mr Babitu for the State
Mr Patrick Kumar for the Accused

Dates of Hearing : 20 & 21 August 2019

Closing Speeches : 22 August 2019

Date of Summing up: 26 August 2019

Date of Judgment : 29 August 2019

Date of Sentence : 25 September 2019

SENTENCE

1. Jainendra Narayan Pal, you stand convicted of rape contrary to section 207(1) and (2)(b) of the Crimes Act 2009. The particulars of offence read as follows;
"Jainendra Narayan Pal on the 15th day of December 2015 at Nadi in the Western Division penetrated the vagina of Vilisita Waqaitubuna with his fingers without her consent."

2. The maximum sentence for rape is life imprisonment. The tariff for adult rape is 7-15 years. (Rokolaba v State [2018] FJSC 12; CAV0011.2017 (26 April 2018).
3. You pleaded not guilty to the charge of rape on 30 March 2016. After two days of trial the assessors returned with a unanimous opinion that you are guilty of rape. Subsequently you were convicted for the offence of rape by the judgment of this court on 29 August 2019.
4. You were employed as a lab technician at the Nadi Hospital. On 15 December 2015 the complainant visited the Nadi Hospital to get a blood test done. Her blood sample was taken by a female at the lab. When the complainant was waiting at the waiting area you approached her and informed her to come back in the evening for the blood report. You also informed the complainant that she has a sexually transmitted disease. You gave your mobile number to the complainant to call you. When the complainant came to the hospital around 6pm you asked her to lie down on a bed and to take off her mini shorts and her undergarment. You wore gloves and started touching her vagina. You inserted two fingers into her vagina and told her that you would be able to find her disease by doing that. Then you told the complainant that it is not safe there and to wear her clothes. You asked her to go through the back door to another room. You also told the complainant to inform the security officers that she is a friend of your cousin. You took her to a room and asked her to lie down on the bed. You wore gloves and inserted your fingers into her vagina again. You also asked her to remove her T shirt to see her breasts to find out the disease. You inserted another object like cotton wool into her vagina and told her that you would take it to Lautoka to check for results. Later you told the complainant to go to the bathroom and clean herself as she was having menstruation. When she was in the bathroom you entered into the bathroom naked and tried to touch her vagina. The complainant pushed you away and ran to the room where she left her clothes. She then ran out of the hospital after putting her clothes on. The next day the complainant came to the hospital. She

informed you over the phone that she is going to see another doctor. You then met the complainant and gave her some pills, namely Amoxicillin and asked her to go back home. When she was going to see a doctor, you went and told the doctor not to believe the complainant. The complainant met the doctors and complained about the incident. Further the doctors informed the complainant that she does not have any STD. The matter was thereafter reported to the Police.

5. I have seen the following aggravating features in this case;

i) Significant degree of planning

You disguised as a doctor to convince the complainant that you were carrying out a medical examination. You have taken her to your quarters on the pretext of taking her to a safer place to conduct the medical examination.

ii) Abuse of trust

Being an employee of the hospital, you abused trust of a patient who came to the hospital for a medical test.

iii) Vulnerability of the complainant

You have taken the advantage of the complainant's situation by informing her that she is having a sexually transmitted disease.

iv) Steps taken to prevent the complainant reporting the incident

You gave her medicine to prevent her from reporting the incident when you were not qualified to prescribe such medicine. You further tried to prevent the incident being reported by informing the doctor not to believe the complainant.

v) Emotional and psychological effects

You have humiliated the complainant by making her undergo a false medical examination on her vagina. As per the victim impact statement the complainant feels scared and insecure. She has flashbacks of the incident and she had to change her work as it affected her work as well.

6. I have considered the mitigation submissions filed on your behalf. You are 27 years and a first offender. It should be noted that your family and personal circumstances carry only a little mitigating value. The only significant mitigating factor is your previous good character. However previous good character will carry only minimal mitigating value in sexual offences as indicated in *Senilolokula v State* [2018] FJSC 5; CAV0017.2017 (26 April 2018);

“The only factor relating to the defendant which could amount to mitigation is that he was a first time offender, but that cannot be significant mitigation in this case since it was because he was a man of good character that he was entrusted with the responsible position of warden of a hostel for deaf children. I would discount his sentence by one year to reflect that fact.”

7. In this case I pick 7 years as the starting point. I add 5 years for the aggravating factors. I deduct 1 year for mitigation. Accordingly, I impose 11 years imprisonment on you.
8. You were in remand custody from 30 December 2015 to 20 January 2016. I make a downward adjustment of one month to your sentence to regard the period that you were in remand custody as a period of imprisonment already served by you.
9. Section 18 of the Sentencing and Penalties Act provides that the Court must fix a period during which the offender is not eligible to be released on parole when the Court sentences an offender for more than two years. However, in the recent Supreme Court decision in *Nacani Timo V State* Criminal Petition No: CAV 0022 of 2018 it was decided that;

“It is not mandatory for a Court to award a non-parole period to every convict. However, a decision to award or decline to award a non-parole period must be taken by a court after hearing a convict and the decision must be accompanied by reasons, with an economy of words, as a part of a just, fair and reasonable procedure keeping the interests of the convict and society(including the victim) in mind”.

10. You have used your position to fulfil your pervert desires. Your actions are sickening and deplorable. Members of the public go to hospitals with so much of agony and distress due to their medical conditions. You shamelessly exploited the desperation of a patient in a manner that should be condemned unreservedly. Therefore the sentence must reflect the court’s and the society’s disapproval of your actions.

11. However, you are still at very young age and having considered your age and prospects of rehabilitation I decide not to set a non-parole period.

12. Accordingly, I sentence you to 10 years and 11 months imprisonment.

30 days to appeal to the Court of Appeal.



Rangajeeva Wimalasena
Acting Judge

At Lautoka

25 September 2019

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Patrick Kumar Lawyers