

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 274 of 2019

STATE

vs.

AVYASH MANI GOUNDEN

Counsel: Ms. S. Swastika for the State
Mr. M. Yunus for Accused

Date of Hearing: 17th, 18th, 19th and 20th February 2020

Date of Closing Submission: 20th February 2020

Date of Summing Up: 24th February 2020

Date of Judgment: 02nd March 2020

Date of Sentence: 05th March 2020

SENTENCE

1. The court found the accused, Mr. Avyash Mani Gounden, guilty of one count of Rape, contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and convicted of the same accordingly.
2. The prosecution proved the accused had gone to the bedroom when the complainant and his little son were in it. He then removed her pajama and penetrated the vulva of the complainant with his tongue or mouth. Moreover, the accused had touched the genitalia of the complainant.

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. It becomes more serious when it is involved with a child victim. Hence, I find the rape in this nature is a grave crime. In this case, the complainant was sexually abused by a person who is known to her. This form of sexual exploitation of children by the known adult is a serious offence.
4. Given the serious nature of this crime, the main purpose of this sentence is 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 harsh and long custodial sentence is inevitable for the offences of this nature.
5. Gates CJ in Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that the tariff of the rape of a child is between eleven (11) to twenty (20) years' imprisonment period. The tariff of the offence of Sexual Assault is between two (2) years to eight (8) years' imprisonment.
6. All of the two counts are founded on the same series of offending of the same and similar characters. Therefore, the court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
7. The victim impact report states the complainant is going through an adverse emotional and psychological trauma due to this incident. Her lifestyle has adversely changed after this incident. It has negatively affected her life, making her withdrawn and an isolated personality. Therefore, I find the level of harm is substantially high in this offending.
8. You had asked the complainant to go to the bedroom and play with the little boy. Her father was in the living room, drinking beer. You then went to the bedroom and committed this crime. Hence, it appears this is an opportunistic crime. Accordingly, I find the level of culpability and harm is substantially high.

9. Having taken into consideration the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, I find this is an appropriate case to fix a middle-range starting point. I accordingly select thirteen (13) years as the starting point.
10. The complainant was eight (8) years old at the time of this offence took place. You were forty-one (41) years old at that time. Therefore, the age difference between you and the complainant is substantially high. The complainant trusted you as one of her father's relatives. However, you breached that trust by committing this heinous crime on her without any remorse. By committing this crime, you have exposed this eight-year-old child to sexual activities at a very young age, thus preventing her from having a natural growth of maturity in her life.
11. I find these factors as aggravating factors in this offending.
12. The learned Counsel for the defence in his mitigation submissions discussed your family and personal circumstances, which has no much mitigatory values.
13. You are a first offender. You are an active member of the village temple. Therefore, you are entitled to a discount for your previous character.
14. In view of the reasons discussed above, I increase further three (3) years for the aggravating factors to reach an interim period of sixteen (16) years. Given the above-discussed mitigation factors, I reduce two (2) years. I accordingly conclude fourteen (14) years imprisonment as your final sentence.
15. Having considered the seriousness of this crime, the purpose of this sentence, and your age, I find twelve (12) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for twelve (12) years under Section 18 (1) of the Sentencing and Penalties Act.


Head Sentence

16. Accordingly, I sentence you to a period of fourteen (14) years imprisonment as an aggregate sentence to one count of Rape, contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Moreover, you are not entitled to any parole for twelve (12) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

17. You have been in remand custody for this case for nearly forty -two (42) days. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider two (2) months as a period of imprisonment that has already been served by you.
18. Accordingly, the actual sentencing period is thirteen (13) years and ten (10) months imprisonment with a non-parole period of eleven (11) years and ten (10) months.
19. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

05th March 2020

Solicitors

Office of the Director of Public Prosecutions for the State.
YLAW for the Accused.