

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 60 OF 2017

BETWEEN : **STATE**

AND : **SATISH CHAND**

Counsel : *Mr. A. Singh for the State*
Ms. J. Singh

Hearing on : *05th – 06th of October 2020*
Summing up on : *09th of October 2020*
Judgment on : *16th of October 2020*
Sentence on : *12th of November 2020*

(The name of the alleged victim is suppressed and will be referred to as the complainant, PW1 or S.D)

SENTENCE

1. Satish Chand, you have been found guilty and convicted of 1 count of Rape and a 1 count of Sexual Assault.
2. The accused pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant S.D, her mother Sharin, Susan Radhika Naidu the manager of the settlement and Dr. Sudhiksha Singh, who examined the complainant at the hospital gave evidence for the prosecution while the accused gave evidence and called a witness Mr. Atish Chand, on his behalf.
3. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged two counts

of Rape and Sexual Assault. This court having reviewed the evidence, concurred with the opinion of the Assessors, found you guilty and convicted you of the said two counts.

4. It was proved during the trial that, being close friend and a relative of the family how you preyed upon her, sexually assaulted and raped her on one morning.
5. The two offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two (2) offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

6. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the aggregate sentence to be imposed on you.
7. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
8. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

"...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage."

9. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

10. It is safely assumed that the tariff set for rape of a child is 11 to 20 years of imprisonment. [**Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018)]. In consideration of the objective seriousness and the fact that this is an aggregate sentence, I commence the sentence at 12 years of imprisonment.
11. The aggravating factors are as follows:
 - (i) This was a serious and abhorrent crime.
 - (ii) There was gross abuse and breach of trust.
 - (iii) The impact of the crime on the victim was traumatic.
 - (iv) These crimes took place at the family’s own house.
12. Considering the aforementioned aggravating factors, many of them were already considered by the Supreme Court in setting this tariff. Therefore it remains little for me to consider afresh. In consideration of them, I enhance your aggregate sentence by further 1 year. Now your aggregate sentence is 13 years of imprisonment.
13. Your counsel has indicated that you have no previous convictions or any pending cases. Therefore, I will consider you as a first time offender.
14. In considering that you are a first time offender and the rest of the mitigating factors submitted on your behalf I deduct three years from the above.
15. Accordingly, I sentence you to a term of imprisonment of 10 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 7 years of that sentence.
16. Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

17. You have been in remand custody for this case for two weeks in 2017. Thereafter, you were in remand custody since 16th of October 2020, to this date. Accordingly, you have been in custody for a period of about 6 weeks. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 1 month and 2 weeks should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

18. In the result, you are sentenced to a term of imprisonment of 10 years with a non-parole period of 07 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	09 years and 10 months and 2 weeks.
Non-parole period	-	06 years and 10 months and 2 weeks.

19. You have 30 days to appeal to the Court of Appeal if you desire so.




Chamath S. Morais
JUDGE

At Lautoka
12th November 2020

Solicitors for the State : **Office of the Director of Public Prosecutions, Lautoka.**
Solicitors for the Accused : **Legal Aid commission, Lautoka.**