

IN THE HIGH COURT OF FIJI AT LABASA

CASE NO: HAC. 44 of 2020
[CRIMINAL JURISDICTION]

STATE

V

PRASHANT NISCHAL DASS

Counsel : Ms. S. Swastika for the State
Mr. A. Kohli with Ms. S. Naidu for the Accused

Hearing on : 15 - 18 March 2021

Judgment on : 19 March 2021

Sentenced on : 19 March 2021

SENTENCE

1. Prashant Nischal Dass, after trial, you stand convicted of the following charge;

Statement of Offence

Rape: contrary to Section 207 (1) and 2 (b) of the Crimes Act, 2009.

Particulars of Offence

PRASHANT NISCHAL DASS on 3 December 2019, at Seaqaqa in the Northern Division, penetrated the vagina of **APIKALI WAQAVONOVONO**, with his fingers, without her consent.

2. To state the facts very briefly, you being an intern nurse, made false and fraudulent representations to the victim who was a six months pregnant mother at the material time during the antenatal clinic held at Naqumu Nursing Station on 03/12/19, that it is part of your duty as a nurse during that clinic to penetrate her vagina with your fingers and then you inserted two of your fingers inside her vagina and kept your fingers inserted in her vagina for a

considerable period of time, twisting your fingers inside her vagina. It was clear from the evidence given by the victim that you did not obtain her consent for this act at all and she simply allowed you to penetrate her vagina, because of your misrepresentation and because she had placed her trust on you as a nurse.

3. The maximum sentence for the offence of rape in terms of section 207 of the Crimes Act 2009 is imprisonment for life. It is settled that the sentencing tariff for rape of an adult victim is a term of imprisonment between 7 years and 15 years. [*State v Naicker* [2015] FJHC 537; HAC279.2013; *Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)]
4. Given the above tariff, I would select 7 years as the starting point of your sentence.
5. You are 25 years old and at the time of committing the relevant offence, you were 23 years old. Though you were an intern nurse when you committed this offence, you were part of public health service and were representing the government of Fiji when you conducted the clinic on 03/12/19 and committed this crime on a 06 months pregnant mother. Your counsel argues that you were inexperienced at that time and it was your inexperience and incompetency that had led you to commit this offence. However, the facts that were established during the trial suggests otherwise. It was not your incompetency that led you to commit this offence. You very well knew what you were doing was wrong, as clearly demonstrated by how you have dealt with the victim and the fact that you have not made any record that you performed an invasive procedure on the victim. You have not respected the victim's bodily autonomy. You do not need to be a professional nurse to understand the fact that you cannot invade the body of a woman and violate her personal inner space as and when you want. It was manifestly clear from the evidence that you were not carrying out a proper medical procedure when you raped the victim. Therefore the fact that you were inexperienced, the fact that you were just an intern, and the claim that

your work ought to have been supervised and you should not have been assigned as a relieving nurse are immaterial in this case.

6. As PW3 had told you as revealed in her evidence, you have 'destroyed the trust of the patient' not only the trust placed on you, but on the health system in the country. Pregnant mothers in the country should not be allowed to have the perception that they run the risk of being violated and abused when they attend clinics at nursing stations or health centres.
7. I would agree with the submission of your counsel to the effect that it would not be appropriate to consider your offending as prevalent, for the reason that though you have committed the offence of rape, your conduct which constitutes rape is not prevalent in this country. However, I am unable to convince myself that any leniency should be shown to you for this reason because your criminal conduct though not prevalent is very serious given the implication of that conduct on the health system, the sense of humiliation and violation you have instilled in the mind of the victim and the potential of that conduct to create a sense apprehension in all pregnant mothers in general.
8. All in all, your sentence should reflect the denunciation of your abhorrent conduct that would serve as a deterrent and also a reassurance to the society that such conduct is taken very seriously by the court.
9. I consider the following as aggravating factors in this case;
 - a) There is a serious breach of trust as explained above;
 - b) Your act of twisting your fingers inside her vagina causing her pain and continuing with that even after she informed you that it was painful; and
 - c) You exploited the victim's vulnerability and naivety.
10. The only mitigating factor is that you are a first offender. Your counsel also submitted the fact that you apologised to PW3 should be considered as a

mitigating factor. But, according to you, you were told by PW3 to include an apology in your statement and in your evidence you did not say that you have tendered as apology to anyone. You were not remorseful and you kept on trying to convince this court that you have simply performed a proper medical procedure. Hence, I cannot accept that there was an indication of remorse on your part.


11. As your personal circumstances, it is submitted that you have been terminated from work and currently unemployed, you are single and that you live with your parents. I would bear in mind these circumstances in determining your sentence.
12. Considering the above aggravating factors I would add 05 years to your sentence. Now your sentence is an imprisonment term of 12 years. In view of the above mitigating factor, I would deduct 03 years bringing your sentence to 09 years imprisonment.
13. Accordingly, I would sentence you to a term of 09 years imprisonment. In view of the fact that you are a first offender and your age, I would fix your non-parole term at 05 years in terms of section 18(1) of the Sentencing and Penalties Act.
14. It is submitted that you were in custody for a period of 12 days in view of this case. The said period shall be considered as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I would regard the time that should be considered as served to be 01 month.
15. In the result, you are sentenced to a term of 09 years imprisonment with a non-parole period of 05 years. In view of the time spent in custody, time remaining to be served is as follows;

Head Sentence - 08 years; and 11 months

Non-parole period - 04 years and 11 months

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




Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State
Kohli & Singh for the Accused