

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 184 OF 2019**

**BETWEEN** : STATE

**AND** : VISHESH RAJ

**Counsel** : Ms U Tamanikaiyaroi with Ms P Kumar for the State  
Mr J Reddy and Ms S Begum for the Accused

**Date of Hearing** : 19 – 21 April 2022

**Date of Judgment** : 3 June 2022

**Date of Sentence** : 17 June 2022

**SENTENCE**

- [1] The offender was a primary school teacher. In 2019 he was charged with four counts of abduction, one count of rape and three counts of defilement. He pleaded not guilty to the charges. Unfortunately, the trial was delayed due to Covid-19 Pandemic.
- [2] In April 2022, the offender was tried and convicted of all the charges. The facts are as follows.
- [3] In 2018, the offender graduated with teaching qualification from the Fiji National University. His first posting as a teacher was at a primary school in Suva. He was assigned to teach Year 5. The victim was one of his students.
- [4] In 2019, the victim progressed to Year 6 while the offender became Year 3 teacher. The offender maintained a close connection with the victim and convinced her to accompany him to visit places in his vehicle. They planned to skip school by faking

sickness and meet at a car park of a supermarket that was along the way to their school.

- [5] On the first occasion, 28 February 2019, the victim accompanied the offender to a hotel in Pacific Harbour. The victim was 12 years old then. He took her into a room and had sexual intercourse with her. She said that she experienced pain during sexual intercourse. He did not use any protection but ejaculated outside. The offender convinced the victim to keep their relationship discreet. The victim kept quiet and her parents and her teachers had no knowledge of the offender's sexual relationship with his student.
- [6] Between March and May 2019, the offender took the victim to hotels along Nasinu and Nausori corridors on three other occasions, and had sexual intercourse with her, without the knowledge of her parents. By this time the victim had turned 13 years old. Since she had consensual sexual intercourse, the offender was convicted of abduction and defilement, as consent of the victim is not a defence to these offences. The last incident occurred on a weekend and the offender was exposed when the victim secretly disappeared from her home for a few hours and was later caught by her parents.
- [7] The offences are objectively serious. Rape is punishable by life imprisonment. The maximum penalty for defilement is 10 years imprisonment and the maximum penalty for abduction is 5 years imprisonment.
- [8] In *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018) the Supreme Court said in paragraphs [24]-[25]:

[24] The increasing prevalence of these crimes, crimes characterized by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that judicial discretion should be shackled. But it

is obvious to state that crimes like these on the youngest children are the most abhorrent.

[25] The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms. (*per* Gates CJ)

[9] The offender is now 32 years old. He is married with no children. Currently, he is unemployed. He suffers from chronic arthritis and had undergone knee surgery in the past on at least two occasions. I do not consider the offender's medical condition to be exceptional to mitigate his crimes. He was medically fit to work as a teacher and in the course of his employment commit sexual crimes against his student. His family circumstances does not mitigate the offences he committed. His claim to have cooperated with the police is of little value. The only mitigating factor is his previous good character but that also cannot be given significant weight because it was due to his previous good character he was employed as a school teacher.

[10] Teachers hold a special position of trust in the society. They are the guardians of the children during the teaching school hours. Parents entrust them with their children. When a teacher sexually abuses his pupil he breaches the trust of the child and of the child's parents, and brings his teaching profession into disrepute. Such crimes must be denounced in the strongest terms and the sentence imposed must have a deterrent effect. But the sentence must be just and fair in all circumstances of the case.

[11] In this case the child was of a very young age. At the time of the first sexual encounter she was 12 years old and the offender was 28 years old. The age gap between the offender and the victim was vast and is an aggravating factor. Other

aggravating factors are that the crimes involved significant planning and the sexual abuse was repeated over a period of four months. The victim experienced pain during sexual intercourse and she was exposed to pregnancy and sexually transmitted diseases due to unprotected sex. She had to change school to avoid embarrassment and she will have to live with the stigma of rape for the rest of her life.

- [12] For the offence of rape, I pick 11 years as my starting point. I add 6 years to reflect the aggravating factors and deduct 11 months to reflect the offender's previous good character and one month to reflect his remand period.
- [13] For the offence of rape (count 2), the offender is sentenced to a term of 16 years imprisonment.
- [14] For the offence of defilement (counts 4, 6, 8), the offender is sentenced to an aggregate term of 8 years imprisonment.
- [15] For the offence of abduction (counts 1, 3, 5, 7), the offender is sentenced to an aggregate term of 4 years imprisonment.
- [16] All terms are made concurrent. The total effective sentence is 16 years imprisonment with a non-parole period of 12 years to serve before any release may be considered.



A handwritten signature in black ink, appearing to read "Daniel Goundar", positioned above a dotted line.

Hon. Mr Justice Daniel Goundar

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Reddy Lawyers for the Accused