

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 187 OF 2022

THE STATE

vs.

MANOJ KUMAR

Counsel : Mr. J. V. Singh for State
Ms. L.M. Ratidara with Mr. B. Singh for Defence

Dates of Hearing: 1, 2 November 2022

Date of Judgment : 4 November 2022

Date of Sentence: 11 November 2022

(Name of the Complainant is suppressed. She is referred to as KK)

SENTENCE

1. Mr. Manoj Kumar, you were charged on the following information filed by the Director of Public Prosecutions.

COUNT ONE

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, assaulted KK by slapping and punching her face, thereby causing her actual bodily harm.

Count 2

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (c) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, penetrated the mouth of KK with his penis, without her consent.

Count 3

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210(1) (a) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, unlawfully and indecently assaulted KK, by making love bites on her thighs.

Count 4

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, penetrated the vagina of KK, with his fingers, without her consent.

Count 5

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, had carnal knowledge of KK, without her consent.

Count 6

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, had carnal knowledge of KK, with his penis, without her consent.

Count 7

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to section 375(1) (a) (i) (iv) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23rd day of May 2022 at Cunningham in the Central Division, without lawful excuse threatened to kill KK, with intent to cause alarm to KK.

2. At the end of the Prosecution case, you were acquitted on count 3. After full trial, you were found guilty on other six counts, and convicted. Having been convicted, you come before this Court for sentence.
3. On 23 May 2022, you came home drunk. As soon as you entered the house, you locked the door from inside. Having returned from work, your wife, (the complainant), was relaxing on the sofa. She told you to go and have a bath as you were stinking beer. You then started punching her in her face, lips and eyes. Her head was banged badly. You also strangled her neck to the extent that she was not able to breathe properly or shout. Blood was flowing out form her lips.
4. You then forcefully dragged her to the bedroom and took off her clothes without her consent. She was not ready for sex at that time as you were drunk. You did not listen to her and went ahead to satisfy your lustful demands. Firstly, you put two fingers inside her vagina. Then you took a shaving gear and shaved her pubic hair. You then penetrated her vagina with your penis without her consent. After that, you penetrated her mouth with your penis. Then you punched her in her face again and warned her not to shout. Finally you put your penis on her anus. You threatened her that you will chop her into pieces, kill her and put in the mortuary.

5. The maximum penalty for Rape is life imprisonment. The sentencing tariff for rape of an adult ranges from 7 to 15 years' imprisonment (*Kasim v The State* (unreported) Cr. Case No. 14 of 1993 (27 May 1994). The maximum sentence for Criminal Intimidation with death threats as per Section 375(1) (a) (i)(iv) and (2) (a) is a term of ten years' imprisonment and the accepted tariff would be from 12 months to 4 years imprisonment [*State v Baleinabodou* (2012) FJHC 981]. The maximum sentence for Assault Causing Actual Bodily Harm is five years imprisonment and the tariff ranges from an absolute/ conditional discharge to 12 months imprisonment *State v Tugalala* [(2008) FJHC 78]
6. In the sentencing process, I must have regard to the proportionality principle enshrined in the Constitution, the Sentencing and Penalties Act 2009 (SPA), the current sentencing practice and the applicable guidelines issued by the courts. I will select an appropriate starting point, having regard to the seriousness of the offence and the impact or harm caused to the victim. Then I will adjust your sentence by looking at the aggravating and mitigating factors to arrive your final sentence.
7. The maximum sentence prescribed by the Parliament indicates that Rape is a serious offence. When it is committed in a domestic setting, using violence, the seriousness is at its height. The Courts in Fiji have dealt the rape offenders with harsher punishments.
8. The Courts in Fiji have emphasised that the increasing prevalence of this offence in the community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The rapists must receive condign punishment to mark the society's outrage and denunciation. The combination of those purposes form the basis of your punishment.
9. All the offences took place in a single transaction based on the same facts. According to Section 17 of the Sentencing and Penalties Act 2009 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 has a discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for all the offences under Section 17 of the Sentencing and Penalties Act.

10. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select as the first step in the sentencing process a starting point of 7 years from the bottom range of the tariff.
11. In the light of the Supreme Court decision in *Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015), and the helpful submissions of the Counsel, I have identified the following aggravating and mitigation factors:

Aggravating factors:

- (i) There was a gross abuse and breach of trust in a domestic setting. The victim is your wife and was vulnerable. You betrayed that trust and confidence.
- (ii). You instilled fear in her by threatening not report to police.
- (iii). You committed these offences after consuming alcohol.
- (iv). The locking the door before committing the offences suggests that the attack is premeditated.
- (v). The use of a shaving gear to shave victim's pubic hair is degrading and humiliating.
- (vi). Victim Impact Statement has described how the life of the victim has been affected due to the abuse. The offences have caused a considerable psychological impact on the victim and that impact is traumatic and continuing. The victim was forced to relocate herself after the offending.

Mitigating Factors:

- (i). You are 38 years of age. You live with your father and brother. You are employed as a carpenter earning \$280-\$300 a week. The personal circumstances have very little mitigatory value- *Raj v The State* [2014] FJSC 12 CAV0003.2014 (20th August 2014).
- (ii). You do not have any previous convictions. You have maintained a clear record over the past 38 years of your life. However, your clear record is of little value in this case because you committed this crime in breach of trust. *Senilolokula v State* [2018] FJSC 5; CAV0017.2017 (26 April 2018)

12. I add 4 years to the starting point of 7 years for above mentioned list of aggravating factors to arrive at 11 years and reduce 10 months for mitigating factors to arrive at a sentence of 10 years and 2 months' imprisonment.
13. You have been in remand for approximately 2 months from the date of your arrest and after conviction. Exercising my discretion under Section 24 of the Sentencing and Penalties Act, I reduce the time spent in remand from your sentence to arrive at a final aggregate sentence of 10 years' imprisonment for all three offences.
14. You are young and a first offender. Taking into consideration your age, potential for rehabilitation, and the societal interests, I impose a non- parole period of 08 years.
15. Summary.

Mr. Manoj Kumar, you are sentenced to an imprisonment term of 10 years with a non-parole period of 08 years. A permanent Domestic Violence Restraining Order is issued to protect the victim.

16. You have 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge
Judge

11 November 2022
At Suva

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for offender