

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO HAC 78 OF 2024

STATE

V

RAJNESH SINGH

Counsel: Ms A. Singh with R Pai for State
Mr F. Singh for Defence

Sentence Hearing: 02 December 2024

Date of Sentence: 11 December 2024

(The name of the Victim is suppressed. She is referred to as ES)

SENTENCE

1. Mr Rajnesh Singh, you pleaded guilty on your own free will to the following counts in the information filed by the Director of Public Prosecutions:

FIRST COUNT.

(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to sections 207(1) and (2) (c) and (3) of the Crimes Act 2009

Particulars of Offence

RAJNESH SINGH between the 01st day of January and the 31st day of December, 2022 at Lautoka in the Western Division, penetrated the mouth of ES with his penis, a child under the age of 13 years.

SECOND COUNT

(REPRESENTATIVE COUNT)

Statement of Offence RAPE: Contrary to sections 207(1) and (2) (b) and (3) of the Crimes Act 2009

Particulars of Offence

RAJESH SINGH between the 01st day of January and the 31st day of December, 2022 at Lautoka in the Western Division, penetrated the vagina of ES with his tongue, a child under the age of 13 years.

THIRD COUNT

(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009

Particulars of Offence

RAJNESH SINGH between the 01st day of January and the 31st day of December, 2022 at Lautoka in the Western Division, penetrated the vagina of ES with his fingers, a child under the age of 13 years.

FOURTH COUNT

(REPRESENTATIVE COUNT)

Statement of Offence RAPE: Contrary to sections 207(1) and (2) (c) and (3) of the Crimes Act 2009

Particulars of Offence

RAJESH SINGH between the 01st day of January and the 31st day of December 2023 at Lautoka in the Western Division, penetrated the mouth of ES with his penis, a child under the age of 13 years.

FIFTH COUNT

(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to sections 207(1) and (2) (b) and (3) of the Crimes Act 2009 Particulars of Offence RAJESH SINGH between the 01st day of January and the 31st day of December 2023 at Lautoka in the Western Division, penetrated the vagina of ES with his tongue, a child under the age of 13 years.

SIXTH COUNT
(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009

Particulars of Offence

RAJNESH SINGH between the 1st day of January and the 31st day of December, 2023 at Lautoka in the Western Division, penetrated the vagina of ES with his fingers, a child under the age of 13 years.

SEVENTH COUNT
(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to sections 207(1) and (2) (c) and (3) of the Crimes Act 2009 Particulars of Offence RAJNESH SINGH between the 01st day of January and the 24th day of April 2024 at Lautoka in the Western Division, penetrated the mouth of ES with his penis, a child under the age of 13 years.

EIGHTH COUNT
(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to sections 207(1) and (2) (b) and (3) of the Crimes Act 2009

Particulars of Offence

RAJNESH SINGH between the 01st day of January and the 24th day of April 2024 at Lautoka in the Western Division, penetrated the vagina of ES with his tongue, a child under the age of 13 years.

NINTH COUNT
(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to sections 207(1) and (2) (c) and (3) of the Crimes Act 2009

Particulars of Offence

RAJESH SINGH, between the 01st day of January and the 24th day of April 2024 at Lautoka in the Western Division, penetrated the vagina of ES with his fingers, a child under the age of 13 years.

2. You understood the charges read in Hindi. I am satisfied that your pleas were informed, voluntary and unequivocal.

3. You agreed to the following summary of facts read by the State:

BACKGROUND

Date of Offence: Between 1st of January - 31st of December 2022

COMPLAINANT: ES, a child under the age of 13 years, herein referred to as PW1.

ACCUSED: RAJNESH SINGH, 40 years old, Koroipita Lautoka, Watchman, herein referred to as A1.

Relationship The Accused is the Complainant's father.

Date of Offence:

Count 1: Between 1st of January - 31st of December 2022

Count 2: Between 1st of January - 31st of December 2022

Count 3: Between 1st of January - 31st of December 2022

Count 4: Between 1st of January - 31st of December 2023

Count 5: Between 1st of January - 31st of December 2023

Count 6: Between 1st of January - 31st of December 2023

Count 7: Between 1st of January - 24th of April 2024

Count 8: Between 1st of January - 24th of April 2024

Count 9: Between 1st of January - 24th of April 2024

The accused person is charged with the following;

1. Count 1: RAPE contrary to section 207(1)(2) (c) and (3) of the Crimes Act 2009.
2. Count 2: RAPE contrary to section 207(1)(2) (b) and (3) of the Crimes Act 2009
3. Count 3: RAPE contrary to section 207(1)(2) (b) and (3) of the Crimes Act 2009
4. Count 4: RAPE contrary to section 207(1)(2) (c) and (3) of the Crimes Act 2009
5. Count 5: RAPE contrary to section 207(1)(2) (b) and (3) of the Crimes Act 2009
6. Count 6: RAPE contrary to section 207(1)(2) (b) and (3) of the Crimes Act 2009
7. Count 7: RAPE contrary to section 207(1)(2) (c) and (3) of the Crimes Act 2009
8. Count 8: RAPE contrary to section 207(1)(2) (b) and (3) of the Crimes Act 2009
9. Count 9: RAPE contrary to section 207(1)(2) (c) and (3) of the Crimes Act 2009

OFFENCE

Sometimes between the 1st of November and the 31st of December 2022, PW1 was in class one. According to PW 1's statement to the Police, she said A1 would put his tongue on her vagina and

his fingers in her vagina. Further, PW1 also stated that A1 would put his penis in her mouth, vagina and *bumbum* (buttocks).

According to PW1 this continually happened in the year 2023, sometimes between the 1st of November to the 31st of December. Furthermore, she added that it continued to the year 2024, sometimes between the 1st of January – the 24th of April.

(Police statement of ES dated 02/05/2024 is attached and annexed "1")

The matter was reported to social welfare by Temaleti Sau (PW2), who was informed by PW1, and the Police investigations started. According to PW 1, A1 only stopped when she went to live with her aunty namely, SN (PW3).

On the 02nd May 2024, PW1 was examined, and according to the findings of the doctor, the following were noted:

1. Hymen rim is irregular.
2. Anus is intact.

Furthermore, under the heading D (14), the doctor's professional opinion was that the hymen's appearance is a non-specific finding however, it is still abnormal for her age.

(Medical Report dated 02/05/2024 is attached and annexed "2")

CAUTION INTERVIEW & CHARGE

A1, Rajnesh Singh, during his caution interview, denied all the allegations made against him.

(Caution Interview dated 10/05/2024 is attached and annexed "3")

4. The summary of facts satisfies all the elements of the offence of Rape as charged. I find you guilty on all nine counts and convict you accordingly.
5. The State and your Counsel have filed helpful sentencing submissions for which I am grateful. I have considered the same in crafting this sentence.
6. The maximum punishment for Rape is life imprisonment¹. The sentencing tariff for child rape ranges from 11 years to 20 years imprisonment².
7. In selecting the sentence best suited to you, I must regard the proportionality principle enshrined in the Constitution and the Sentencing and the Penalties Act 2009 (SPA). I would also regard Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victim, I would select the starting point.

¹ Section 207(1) of the Crimes Act

² *Aitchison v The State* CAV 00123 of 2018 (2 November 2018)

The final sentence will be arrived at after making just adjustments for the aggravating and mitigating factors.

8. The courts in Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on the Rights of the Child, to which Fiji is a party, and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children expect elders and relatives in a domestic setting to care for and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.
9. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. This Court must see that the sentences operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes in the future. This sentence will make it clear to you and others with similar impulses that if anyone commits these crimes, they will meet with severe punishments.
10. You have committed a series of offences of similar character. 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 the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for offences.
11. Considering the seriousness of the offences, the harm caused to the victim and the number of offences, I select a starting point of 13 years from the lower range of the tariff.
12. With the help of the submissions filed by your Counsel and the sentencing submission by the State, I identified the following aggravating and mitigation factors of your offence:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 40 years of age, whereas your victim was a child aged eight years at the time of the offence. There is a huge age gap (32 years) between you and your daughter.
- (b). You exploited the vulnerability of a child who is in a domestic relationship. You violated all norms of humanity by committing these offences on your biological daughter when you owed a duty of care as her father. You not only violated the victim's body but ruined her entire future.
- (c). The offences were recurrent and committed over some time.
- (d). You stopped your disgraceful acts only when she moved out from you to live with her aunt. Your inhumane behaviour made her leave home and relocate herself.
- (f). The victim was exposed to sexual activity at an age where she doesn't comprehend the intricacies of sexuality.

Mitigating Factors:

- (a). In mitigation, your counsel informed the Court that you are a 40-year-old sole breadwinner looking after your elderly father. Personal circumstances, however, are of little mitigatory value.
 - (b). According to the Record of Previous Convictions filed by the State, you have nil previous convictions. Since you have committed these offences by breaching the trust, you should earn very little for your good character.
 - (c). You pleaded guilty to all counts and saved the court's time. By pleading guilty you saved the victim from reliving her ordeal in Court.
13. I add 04 years and 06 months to the starting point of 13 years for the above-mentioned list of aggravating factors to arrive at an interim sentence of 17 years and 6 months imprisonment. I reduce 1 years for mitigating factors to arrive at an aggregate sentence of 16 years and six-month imprisonment.

14. According to the State, you had been in remand roughly for 6 months. I considered the remand period as part of your sentence already served and is deducted from your sentence to arrive at a final aggregate sentence of 16 years imprisonment.
15. You are a first offender. Considering your potential for rehabilitation and the gravity and impact of the offence on the society, I impose a non-parole period of 14 years.
16. Summary

Mr. Rajnesh Singh, you are sentenced to an aggregate imprisonment term of 16 years for all nine offences you have committed with a non-parole period of 14 years. You are eligible for parole when you have served 14 years in the correction facility.
17. You may appeal to the Court of Appeal within 30 days.



A handwritten signature in black ink, appearing to read "Aruna Aluthge", with a horizontal line extending to the right.

Aruna Aluthge

Judge

11 December 2024

Solicitors

Office of Director of Public Prosecutions for State

Legal Aid Commission for Defence