

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 02 - 2016

STATE

-v-

RAVENDRA KUMAR

For Prosecution : IP Lenaitasi S. [Police Prosecution]
Accused : Mr. Yunus M. [MY Law]
Date of Trial : 3rd August 2020
Date of Judgment : 23rd February 2021
Date of Sentence : 14th February 2022

SENTENCE

1. **RAVENDRA KUMAR**, after pleading not guilty and after your trial, I have found you guilty and convicted you of the following amended charge [amended on the 30th of September 2019] which was preferred by the prosecution:

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 of the **Crimes Act No. 44 of 2009**.

Particulars of Offence

RAVENDRA KUMAR on the 2nd day of November, 2014 at Tavua in the Western Division unlawfully and indecently assaulted **PW1**.

2. The female victim was around 26 years old at the material time doing domestic duties. You would have been around 40 years old. You are a good friend of the victim's husband. The victim looks up to you and treats you as her uncle. The victim and her husband had just moved into town and on the day in question, the victim was alone at home cleaning up. You dropped by and were invited by the victim to have tea and biscuit with some food to be cooked later. While the victim was in the kitchen, you came up to her and squeezed her left breast without her consent. The victim told you to leave or she will call the police. You did not leave immediately. You

told her she was a 'bajaru' or prostitute. After you eventually left and after speaking to her aunty, the victim gathered enough courage to report the matter to police later that same day.

3. You have no previous conviction.
4. You have been bailed since the inception of this case.
5. Your counsel has filed written mitigation which I have considered.
6. You are 44 years old, single and you are self-employed as a qawal or singer of traditional songs. You are a known heart patient and I have perused the letter from the cardiology unit regarding your status. Your counsel argues that a wholly suspended term is justified and that there is no aggravating factor present.

MAXIMUM SENTENCE

7. The maximum punishment that is imposable for indecent assault is up to 5 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

8. The sentencing tariff sentencing tariff for indecent assault is between 12 months to 4 years imprisonment [Rokota v The State [2002] FJHC 168; HAA0068J.2002S (23 August 2002)].

INSTINCTIVE SYNTHESIS APPROACH

9. I will adopt an instinctive synthesis approach when sentencing you.
10. I emphasise the following factors below before summarising your final sentence.

AGGRAVATION

11. There is a breach of trust element in existence here. I disagree with your counsel. You were a good family friend where the victim treats you as her uncle. This is the

primary reason she he naively invited you into the house although her husband was not at home.

12. You also swore at her belittling her saying that she was a prostitute when you found out she did not consent to your sexual advance and when she said she was going to call the police.

MITIGATION

13. In your favour, you are a first offender.
14. You are a heart patient which I accept may require more review and even surgery.

DISCRETION and OBJECTIVE IN SENTENCE

15. I cannot suspend the imprisonment sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** if the imprisonment term exceeds 2 years imprisonment.
16. Amongst other provisions, I am also mindful of section 4 and 15 of the **Sentencing and Penalties Act 2009** when considering the sentence in this case.
17. I place emphasis on the community's denunciation of this type of offending, the need for deterrence and to punish you adequately in light of the circumstance of the case.

SUMMARY

18. **RAVENDRA KUMAR**, you are sentenced to 14 months imprisonment.
19. I do not agree with your counsel's recommendation that a wholly suspended term is warranted in your case even with your medical predicament.
20. A partially suspended term in my view is appropriate especially with the need to deter would be offenders or to send a strong message that sexual offences especially those against women and children will not be tolerated balancing that with your personal mitigation and being a first offender.
21. Out of your 14 months imprisonment, you will serve 6 months imprisonment immediately.

22. The remaining 8 months imprisonment will be suspended for 1 year and 6 months, meaning you are not to reoffend or commit any other serious offence within 1 year and 6 months from today as this remaining 8 months can be ordered to be served by you in whole or in part.
23. Although there is no blood relation here, I am satisfied that a domestic relationship [‘other family member’ section 2 of the Domestic Violence Act 2009] exists between you and the victim.
24. I finalise a domestic violence restraining order with section 27 standard non-molestation conditions on you and this is for the protection of the victim.
25. Do not misbehave towards her or breach any of the condition of the DVRO as you may be charged for another offence.
26. Primarily based on the non-penetrative nature of the indecent assault here, I order that this DVRO expire in 1 year and 6 months from today pursuant to section 22 of the Domestic Violence Act 2009.

28 days to appeal.



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Lisiate T.V. Fotofili

Resident Magistrate

At TAVUA this 14th day of February, 2022