

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 159 OF 2015

BETWEEN : STATE

AND : MAHEN KUMAR

Counsel : Mr. A. Datt for the State
Miss S. Nasedra for the Accused

Date of Hearing : 5th November 2015

Date of Sentence : 20th of November 2015.

SENTENCE

1. You, Mahen Kumar stand convicted for one count of rape contrary to section 207(1) and 207(2) (a) of the Crimes Decree, which carries a maximum penalty of life imprisonment. The particulars of the offence are that;

“Mahen Kumar on the 5th of March 2014 at Ba, in the Western Division, penetrated the anus of Kunal Krishna with his penis without the consent of the said Kunal Krishna”.

2. You pleaded guilty for this offence on 5th of November 2015 on your own free will. Having satisfied that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I convicted you for this offence of rape.
3. It was revealed in the summary of facts, which you admitted in open court, that you had a drinking session of grog at Mr. Jai Narayan’s house on the evening of 5th of March 2014. The victim, who has a low IQ since birth, came to Mr. Narayan’s house to have his dinner. You, having finished your drinking session, waited for the victim to go back

to your home. While you were going back home with the victim, you took him to a nearby cassava patch. You then started to kiss the victim on his lips and removed his pants. You too removed your pants and then inserted your penis into the anus of the victim. You penetrated your penis into his anus several times until you ejaculated.

4. The act of rape is the worse form of sexual offence, which not only physically degrades a human being but also emotionally infringes someone's life severely. Offenders of such heinous crimes need to be dealt with seriously. Such offences undoubtedly attract severe punishment in order to demonstrate that such offences are condemned and denounced by the civilised society without any reservation.
5. Having considered the section 4 (1) of the sentencing and penalties decree, I select the principle of deference as the main purpose of this sentencing. It is a responsibility of the court, to demonstrate the grave seriousness of the offences of this nature to the public in sentencing. I am mindful of the principle of rehabilitation; however, the court must give priority to deter the offenders and other persons from committing offences of this nature, while preserving the principle of rehabilitation.
6. Tariff for the offence of rape ranges from 7 years to 15 years (State v Marawa [2004] FJHC 338; HAC 0016T.2003S (23 April 2004), The State v Navauniani Koroi (unreported) Cr. App Case No. HAA0050.2002S, The State v Samu Seru (unreported) Suva Crim. Case No. HAC0021.2002S, State v Oteti Sivonatoto, Crim Case No 207 of 2011)
7. Having considered the nature of this offending and the seriousness surrounded with the commission of the offence, I select 7 years as the starting point for the count of rape.
8. The victim has a low IQ since his birth. You manipulatively exploited the victim's vulnerability in order to satisfy your reprehensible lust of sexual gratification. The victim's impact report submitted by the Prosecution, states that the victim has suffered physically. I consider these reasons as aggravating factors of this offence.

9. I now turn to consider mitigating factors for you. You pleaded guilty for this offence at the first available opportunity. In doing so, you have demonstrated your remorse of committing this crime, for which you are entitled for a substantial discount. You are 45 years old and have no previous convictions.
10. Having considered the above mentioned aggravating factors, I increase 3 years to reach 10 years of interim imprisonment period. In considering the mitigating factors which I discussed above, I reduce 2 years to reach the final sentence of 8 years for the offence of rape.
11. Accordingly, Mr. Mahend Kumar, I sentence you Eight (8) years of imprisonment period for the offence of rape contrary to section 207(1) and 207 (2) (a) of the Crimes Decree. In pursuant of section 18 (1) of the Sentencing and Penalties Decree, you are not eligible for parole for a period of 6 years.
12. 30 days to appeal to Court of Appeal.


R. D. R. Thushara Rajasinghe

Judge



At Lautoka

20th of November 2015

**Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission**