

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 89 OF 2013

STATE

-v-

GURJEET SINGH

Counsel : Ms. L. Latu for the State
 Mr. F. Koya with Mr. M. Raratabu for Accused

Date of Conviction: 23rd June, 2016

Date of Sentence: 5th July, 2016

SENTENCE

1. Mr. Gurjeet Singh (accused) was found guilty on the following counts and was convicted after full trial.

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

GURJEET SINGH between the 13th day of April 2013 and 14th day of April 2013 at Ba in the Western Division penetrated the vagina of **PREETIKA MOREEN KUMAR** with his penis without the consent of the said **PREETIKA MOREEN KUMAR**.

SECOND COUNT

Statement of Offence

COMMON ASSAULT: contrary to section 274(1) of the Crimes Decree 44 of 2009.

Particulars of Offence

GURJEET SINGH between the 13th day of April 2013 and the 14th day of April 2013 in the Western Division unlawfully assaulted **PREETIKA MOREEN KUMAR** by slapping the said **PREETIKA MOREEN KUMAR** on her face.

2. Accused comes before this court for sentence.

3. Facts of the case were that:

Complainant visited the accused, her ex-boyfriend, at his apartment and started drinking alcohol with him and two others. They were in a friendly conversation consuming alcohol till late night. At one point during the conversation, he got wild at her and back slapped underneath her right eye. It was a shocking experience for her. She started crying and went to the bedroom to isolate herself from accused. Accused came inside the room to comfort her and pulled her up. While comforting, he pulled her shoulder and her T-shirt. Complainant was struggling and asking him to go away. Accused pushed her to the bed, pulled her skirt and panty and forcefully inserted his erected penis into her vagina, penetrating it deeply several times while she was struggling and pushing him away. After the incident, she was taken, at her insistence, to the police station by accused's cousin. She was medically examined at the hospital. Doctor found the injuries on her face and at the base of her introitus consistent with forceful sexual intercourse. Accused admitted having had sexual intercourse with the Complainant with her consent.

Sentence for Rape

4. The maximum penalty for Rape is life imprisonment.

The tariff for rape in Fiji is well settled. When the victim is an adult, as in this case, a minimum sentence of 7 years' imprisonment should be imposed.

5. In *Mohamed Kasim v The State* (unreported) Cr. Case No. 14 of 1993; 27 May 1994,

Fiji Court of Appeal observed:

"We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point."

6. Rape is a serious offence committed against humanity. It is a violation of sexual autonomy of a person. This offence must be deterred and condemned as a social menace. Sentence should reflect the Court's disapproval and condemnation.
7. Complainant, no doubt, trusted her ex-boyfriend when she started drinking alcohol with him, his friend and cousin. She is entitled to drink and socialize with men and say 'no' to an unwelcome demand for sexual intercourse. Accused misread her and violated her rights.
8. It is her enjoyment of life that has been shattered. It has been repeatedly said by psychologists that the effect of sexual assault on victims is profound and prolonged. According to Complainant's evidence and victim impact statement, she was looked down upon by her society in the Indian cultural setting and her marriage prospect was shattered.
9. I consider the Rape count as the head count. Having considered the gravity of the offending, and the impact of the victim, I select a starting point of seven years' imprisonment at the bottom edge of the tariff band for the Rape count.
10. It is a highly aggravating feature that the accused took advantage of a vulnerable woman who was drunk and helpless in his apartment at night. She was forced to submit to the offender by means of physical violence.
11. Accused has maintained a clear record as a first offender. He deserves some leniency on that account.

12. Accused is 32 years old and married with two children. He is employed as a supervisor in a company. He is the sole breadwinner of the family and looks after his elderly in-laws and his children who are undergoing medical treatments.
13. Accused surrendered to court and cooperated with police.
14. To reflect aggravating features, I add two years to the starting point bringing the interim sentence to nine years' imprisonment. In recognition of his clean record as a first offender and other mitigating circumstances, I deduct two year bringing the final sentence to seven years' imprisonment.

Sentence for Common Assault

15. The maximum penalty for the offence of 'Common Assault' under Section 274 of the Crimes Decree is imprisonment of 1 year.
16. As per *The State v Saini Pinau & Two Others* (Crim. case No. 012 of 2013), there is no set tariff for this offence. Sentencing Court has the discretion.
17. Accused had slapped the Complainant causing bruising on her face.
18. Having considered the same aggravating and mitigating circumstances, I impose a sentence of six months' imprisonment for the Common Assault charge.
19. Having considered the personal circumstances of the accused, his youth, his future prospects and his desire for rehabilitation, I order that accused serve only five years in prison before he is eligible for parole.
20. Having considered the 'one transaction rule' I order the sentence imposed on the Common Assault charge to be served concurrently to the head sentence.
21. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge

Judge

AT LAUTOKA

5th July, 2016

Solicitors for State: Office of the Director of Public Prosecutions

Solicitors for Accused: Siddiq Koya lawyers for Accused