

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
IN THE WESTERN DIVISION  
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 07 OF 2014

STATE

V

AMI CHAND

Counsel: Mr. A. Datt for the State  
Mr. W. Pillay for Accused

Date of Judgment : 20<sup>th</sup> June, 2017  
Date of Sentence : 10<sup>th</sup> July, 2017

SENTENCE

- [1] Mr. Ami Chand, on the 20<sup>th</sup> June 2017, you were found guilty on following counts:

*Statement of Offence*

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

*Particulars of Offence*

AMI CHAND on the 31<sup>st</sup> day of December 2013 at Veisaru, Ba in the Western Division, penetrated the vagina of RESHMI MONIKA, with his penis, without her consent.

- [2] Having been convicted of the above charge, you now come before this court for sentence.

- [3] Your brother brought Complainant's family to your house when her husband was employed as a laborer. Complainant was staying in the house that is annexed to your house. On 31<sup>st</sup> December 2013 around 7.00 am, Complainant was making roti in the kitchen. Her two daughters were watching movies inside the room. Her husband had gone to a vegetable farm and her father had gone to town.
- [4] You came to the kitchen and started touching Complainant's breast. Complainant didn't like it. She was trying to free herself. Her daughter had seen this through the window. You then wrapped a rope around her waist and took her to your part of the house and to your bed. Then you made her lie down, came on top of her and inserted your penis into her vagina and started having sexual intercourse with her without her consent.
- [5] After that, you threatened her with strangulation if she were to report this to anybody. Complainant's husband came to know about this incident and reported the matter to police. After this incident, Complainant and her family had to be relocated themselves.
- [6] The maximum sentence for rape is imprisonment for life.
- [7] The tariff for adult rape is well settled. The starting point for adult rape is seven years' imprisonment Kasim v The State (Crim App. No. AAU0021j of 1993S) and the tariff is set between 7 and 15 years' imprisonment State v Marawa [2004] FJHC 338.
- [8] In selecting the starting point, the court must have regard to the objective seriousness of the offence. The Complainant was dragged from her house and the rape was committed in a frightening manner. Considering the circumstances of the offending, I pick a starting point of 7 years from the bottom end of the tariff.
- [9] **Aggravating Circumstances**
- You used violence to commit this offence. A rope was tied around Complainant's waist and dragged her to your house. She also received injuries and, according to Victim Impact Statement, had suffered psychologically.
  - Complainant's husband and father had gone away leaving the Complainant and her daughters under your roof trusting you as an elderly landlord. You breached the trust when you committed this offence as her neighbour.

- Complainant is a feeble woman. She was in a vulnerable situation in that she was a licensee under your roof. No adult was home at that time. You exploited her vulnerability.
- You threatened her with strangulation if she were to report this to anybody. You, through your agent, had interfered with the administration of justice when Complainant was made to sign an affidavit denying the allegation.
- You were not sensitive to the fact that Complainant's daughters were inside the house when you were committing this offence. One of her daughters had seen you touching Complainant's breasts.
- You made Complainant repeat her ordeal in Court.
- After the incident, Complainant and her family had to be relocated themselves.
- Age difference between you and Complainant is approximately 40 years.

[10] **Mitigating Circumstances**

- Your personal circumstances are such that you are approximately 73 years' old. You were widowed for 10 years and raised three children one of whom died recently.
- You sought forgiveness of this court and promise not to reoffend.
- You are a first offender. You have maintained a clear record hitherto.
- You have cooperated with police and Court.

[11] It is sad that you have to be sent to prison in your twilight years of your life. Court has no option but to send you to a prison not only to punish you but also to deter others from committing this type of abhorrent crimes. Rape is prevalent in Fiji and has to be eliminated. The offenders must be punished to denounce such crimes and to send a clear message to the community.

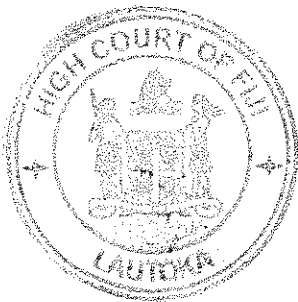
[12] I increase your sentence by 3 years to reflect aforementioned aggravating features bringing your interim sentence to 10 years' imprisonment. I deduct 2 years to reflect mitigating circumstances and the the time spent in remand (2 days). Your final sentence is 8 years' imprisonment.

[13] Having considered your old age and the fact that you are a first offender, I fix a non parole period of 5 years. You are thus eligible to parole after 5 years in prison.

**Summary**

[14] You are sentenced to 8 years' imprisonment with a non parole period of 5 years.

[15] You have 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

**Aruna Aluthge  
Judge**

**At Lautoka  
10<sup>th</sup> July, 2017**

**Solicitors: Office of the Director of Public Prosecution for State  
Gordon and Company for Accused**