

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 183 of 2017**

**STATE**

**V**

**KRISHNEEL CHANDRA**

**Counsel** : Ms. R. Uce for the State.  
: Ms. K. Vulimainadave for the Accused.

**Date of Sentence** : 27 November, 2017

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**SENTENCE**

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*[The name of the victim is suppressed she will be referred to as "SP"]*

[1] The accused was charged for the offence of rape contrary to section 149 and 150 of the Penal Code, Cap. 17 the particulars of the offence were:

*"Krishneel Chandra, between 1<sup>st</sup> October to 31<sup>st</sup> October, 2009 at Lautoka in the Western Division, had unlawful carnal knowledge of "SP" without her consent"*

- [2] The trial proceeded in the Magistrate's Court after the accused had pleaded not guilty. The prosecution called three (3) witnesses whilst the accused gave evidence in his defence.
- [3] On 14<sup>th</sup> July, 2017 the Magistrate's Court convicted the accused as charged, since the tariff for sentencing an accused convicted of raping a juvenile was between 10 to 16 years imprisonment the file was transferred to the High Court for sentencing.
- [4] On 6<sup>th</sup> October, 2017 the matter was called in the High Court. A timeline was given for the filing of sentencing submissions.
- [5] On 25<sup>th</sup> October, 2017 further time was given to the accused to file his mitigation submissions since the State had filed the Victim Impact Statement on 24<sup>th</sup> October, 2017.
- [6] Both counsel have filed written sentencing submissions for which the court is grateful.
- [7] The brief facts were as follows:  
The victim and the accused were neighbours and distantly related. In the month of October, 2009 the victim with her mother, the accused and two others went to Lovu Seaside to catch crabs. The victim was 12 years of age at the time.

The victim and the accused were far away from the others in the mangroves catching crabs. After a while the accused held the victim's neck tightly threatening her that he will kill her if she yells out. The accused pulled the victim's panty and pants below her knees he also had his undergarments and shorts below his knees.

The accused made the victim sit on top of him and started poking her vagina with his finger forcefully. Thereafter the accused inserted his penis into the vagina of the victim. The victim suffered pain when the accused penetrated the vagina of the victim for about 10 to 15 minutes.

The victim did not consent to have sexual intercourse with the accused. After 2 weeks of the incident, the victim told her mother of what the accused had done to her. The victim did not inform her mother earlier was because she was afraid of her mother. The victim's mother reported the matter to the police thereafter the victim was medically examined.

[8] I note at paragraph 11 of the Judgment the learned Magistrate had stated:

*"The mother of the victim corroborated the evidence given by the victim. She confirmed that they went to catch crabs with the Accused and the victim. She further confirmed that the victim and the Accused were not in her vicinity for about half an hour and only when she started calling the victim's name they came back. Further she corroborated the fact that the victim informed about the incident only after two weeks and the victim was scared to report it."*

[9] It is trite law that for the evidence of recent complaint to be admissible, both the complainant and the witness complained to must testify as to the terms of the complaint (see *Kory White v The Queen* [1999] 1 AC 210 at p. 215H). This was done in this case.

[10] The complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the complainant with her evidence at the trial. It supports and enhances the credibility of the complainant.

[11] Although the learned Magistrate had used the words corroboration at paragraph 11 of his judgment I am of the view that no serious error of law and fact had eventuated in this respect.

[12] I am satisfied that the context in which the word corroboration was used in paragraph 11 of the Judgment was to show the consistency of the conduct of the complainant with her evidence given at the trial.

[13] The learned Magistrate had accepted the evidence of the victim as reliable and credible at paragraph 8 of his Judgment as follows:

*“Although the victim was cross examined at length her credibility could not be challenged. The Defence Counsel put to the victim that she made different statements at different times, but no such statements were tendered in court as evidence. I have observed the demeanour of the victim and I am satisfied that she is a reliable and a credible witness.”*

[14] In accordance with section 190 (3) of the Criminal Procedure Act, I have perused the copy record and the exhibits tendered to be satisfied that there are no serious questions of law and fact that needed the intervention of this court before sentence.

[15] I am satisfied that the conviction entered against the accused is not erroneous. The accused has been correctly found guilty and convicted as charged after a trial.

[16] The counsel for the accused presented the following details and mitigation on behalf of the accused:

(a) The accused was a little over 18 years of age at the time of the offending;

- (b) He is married with a child;
- (c) He is a pickle seller who earns about \$150.00 per week and is the sole bread winner of the family.

[17] I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs. The State, CAV 0003 of 2014* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

[18] The aggravating features are as follows:

(a) Breach of Trust

The victim and the accused were neighbours and distant relatives. The victim trusted the accused who took advantage of the victim's vulnerability whilst she was alone with him. The accused breached the trust of a helpless child.

(b) Age difference

The accused was 18 years of age while the victim was 12 years at the time of the offending. The age difference of 6 years is substantial.

[19] The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The Supreme Court of Fiji in *Anand Abhay Raj (supra)* has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.

[20] I note that the accused has a previous conviction in the year 2011 for the offence of theft, since the conviction is for an unrelated offending which was 6 years ago I disregard the previous conviction of the accused and consider him as a first offender.

- [21] Bearing in mind the objective seriousness of the offence committed I take 10 years imprisonment as the starting point of the sentence. I add 4 years for the aggravating factors bringing the interim total to 14 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I find the accused's good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
- [22] I note the accused has been in remand for about 3 months and 12 days. In accordance with section 24 of the Sentencing and Penalties Act I reduce the sentence by 3 months and 12 days as a period of imprisonment already served by the accused. The final sentence is 11 years and 8 months and 18 days imprisonment.
- [23] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim who was 12 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
- [24] Under section 18 (1) of the Sentencing and Penalties Act, I impose 9 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
- [25] Mr. Chandra, you have committed a very serious offence upon a victim who trusted you as your neighbour and distant relative. You took advantage of the victim when she was away from her mother in

a secluded area with you. You have caused pain and sufferings to this innocent unsuspecting vulnerable victim due to your lustful desires.

[26] This court has an obligation to protect the vulnerable from any form of sexual violations therefore an immediate long term imprisonment is warranted.

[27] Although you had just turned 18 at the time of the offending, this Court is unable to afford any further leniency to you bearing in mind your young age. You ought to have known better and restrained yourself from doing what you did. According to the Victim Impact Statement the victim has been disturbed by what you had done to her, as a result she lost her self-esteem and did not complete her education.

[28] In summary I pass a sentence of 11 years and 8 months and 18 days imprisonment for one count of rape that the accused has been convicted of with a non-parole period of 9 years to be served before the accused is eligible for parole.

[29] 30 days to appeal to the Court of Appeal.



**At Lautoka**

**27 November, 2017**

A handwritten signature in black ink, appearing to read "Sunil Sharma".

**Sunil Sharma  
Judge**

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission, Lautoka for the Accused.**