

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 417 OF 2016S

STATE

Vs

GOVIND SAMI

Counsels : Ms. L Bogitini for State
Mr. A Reddy for Accused

Hearing : 19, 20, 21, 22, 23, 26 and 27 February, 2018

Summing Up : 28 February, 2018

Judgment : 28 February, 2018

Sentence : 01 March, 2018

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

Count 1

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) of the Crime Act 2009.

Particulars of Offence

GOVIND SAMI between the 1st to the 31st of July, 2014 at Navua, in the Central Division,
inserted his penis into the vagina of A.C. without her consent.

Count 2

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) of the Crime Act 2009

Particulars of Offence

GOVIND SAMI on the 25th day of October, 2016 at Navua, in the Central Division, inserted his penis into the vagina of A.C. without her consent.

Count 3

Statement of Offence

INDECENTLY ANNOYING ANY PERSONS: *Contrary to section 213(1)(a) of the Crime Act 2009.*

Particulars of Offence

GOVIND SAMI, on the 29th day of October, 2016, at Navua in the Central Division, with intent to Insult the modesty of A.C. exhibited his penis to A.C. intending that his penis be seen by A.C.

2. The brief facts of the case were as follows. The accused, aged 60 years, was a businessman. He owned a 97 acres farm in Raiwaqa, Navua, where he raised various animals and maintained a vegetable farm. He hired various people to work for him on the farm. On the farm, he had a two bedroom farm house. The house had a bathroom, kitchen, a vacant room and a warehouse. In the warehouse, he kept his machineries, working tools and farming manure. The accused had hired the complainant's (PW1) husband (PW2), as his caretaker at the farm house. The complainant was aged 27 years old, and her husband, was 40 years old, at the time of the incidents.
3. In 2014, the accused normally visited his farm every now and then to check on his workers and to issue instructions to them on what to be done. PW1 and PW2 lived in bedroom no. 2 in the farm house, while the accused lived in bedroom no. 1, when he decides to stay at the farm. Between 1 and 31 July 2014, in one of his visits, the accused met the complainant in the warehouse. All his workers were out in the farm. The accused forcefully told the complainant (PW1) to take off her clothes. Out of fear, she complied. The accused then inserted his penis into her vagina for 3 minutes without her consent. He knew she was not consenting to sex at the time (count no. 1). Two years later, on 25 October 2016, in bedroom no. 1, the accused again repeated the above episode to the complainant (count no. 2). Four days later on 29 October 2016, the accused again tried to force himself sexually on the complainant. In the process, he indecently annoyed her by showing her his penis.
4. "Rape", as a sexual offence, had always been viewed seriously by society and the law makers of this country. It carried a maximum sentence of life imprisonment. It is a serious invasion of a person's privacy and dignity. The tariff for the rape of an adult is a sentence between 7 to 15

years imprisonment: Mohammed Kasim v The State, Criminal Appeal No. 21 of 1993, Viliame Tamani v The State, Criminal Appeal No. AAU 0025 of 2003, Mark Mutch v The State, Criminal Appeal No. AAU 0060 of 1990; Anand Abhay Raj v The State, Criminal Appeal No. AAU 0038 of 2010 – all Court of Appeal decisions; and State v Savenaca Turagakece, Criminal Case No. HAC 252 of 2012S, High Court, Suva. The final sentence will depend on the aggravating and mitigating factors”.

5. “Indecently insulting or annoying a person”, carried a maximum sentence of 1 year imprisonment.

6. In this case, the aggravating factors, were as follow:

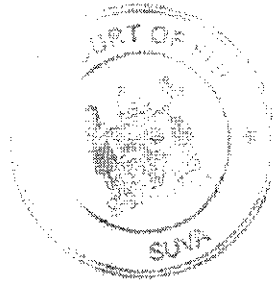
- (i) Serious Breach of Employer Authority. You are a businessman and owned a 97 acre farm, at Raiwaqa Navua. You raised various animals and kept a vegetable plantation in your farm. I'm told you hire approximately 45 people to work for you. You kept a farm house, in which you hired the complainant's husband (PW2) as your caretaker. PW2 and his wife, the complainant (PW1) lived in your farm house. You paid for everything in the farm house for the upkeep of PW2 and PW1. In a sense, you were a decent and good employer. PW2 said, you treated him like a son, when he was working for you. However, unbeknown to him, you were sexually abusing his wife, when you committed the offences in count no. 1, 2 and 3. So, in a sense, you were like a wolf, in a sheep's clothing. You preyed on your caretaker's 27 year old wife, when he least expected it. Your actions were nothing, but deceitful. You have seriously breached your authority as an employer, and you must not complain of the loss of your liberty, to pay for your crimes
- (ii) By offending against the complainant, you showed no regard to her right as a human being, no regard to her right to be protected by you as her “boss”, and no regards to her right to live a peaceful life;
- (iii) By your offending, you have caused heart ache and sadness to the complainant's family.

7. The mitigating factors were as follows:

- (i) At the age of 62 years, this is your first offence;
- (ii) You did not accompany your offendings, by physically assaulting the complainant.

8. On count no. 1, I start with a sentence of 9 years imprisonment. I add 3 years for the aggravating factors, making a total of 12 years imprisonment. For the two mitigating factors, I deduct 3 years, leaving a balance of 9 years imprisonment. On count no. 1, I sentence you to 9 years imprisonment.
9. On count no. 2, I repeat the above process and sentence.
10. On count no. 3, I sentence you to 9 months imprisonment.
11. The summary of your sentences are as follows:

(i)	Count No. 1	-	Rape	:	9 years imprisonment
(ii)	Count No. 2	-	Rape	:	9 years imprisonment
(iii)	Count No. 3	-	Indecently Annoying	:	
			A Person	:	9 months imprisonment
12. Because of the totality principle of sentencing, I direct that all the above sentences will be made concurrent to each other, making a final sentence of 9 years imprisonment.
13. Mr. Govind Sami, for raping the complainant in July 2014, in October 2016, and also indecently annoying her in October 2016, I sentence you to 9 years imprisonment, with a non-parole period of 8 years imprisonment, effective forthwith.
14. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner which was just in all the circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and community denounce what you did to the complainant in July 2014 and in October 2016.
15. The name of the female complainant is permanently suppressed to protect her privacy.
16. You have 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to be "Salesi Temo".

Salesi Temo

JUDGE

**Solicitor for State
Solicitor for Accused**

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**Office of the Director of Public Prosecution, Suva.
Reddy & Nandan, Barristers & Solicitors, Suva**

