

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CRIMINAL CASE NO. HAC 020 OF 2017

BETWEEN : **STATE**

AND : **BARMA NAND**

Counsel : **Mr. J. B. Niudamu for the State**
Mr. J. Reddy for the Accused

Hearing on : **24th of February 2020 – 27th of February 2020**
Summing up on : **02nd of March 2020**
Judgment on : **06th of March 2020**
Sentence on : **11th of June 2020**

(The name of the victim is suppressed and will be referred to as ML, PW1 or the complainant.)

SENTENCE

1. Barma Nand, you have been found guilty and convicted of 2 counts of Rape.
2. You pleaded not guilty to the charges and the ensuing trial lasted for 4 days. The complainant ML, her aunt Urmila and Dr. Ranita Vikashini Maharaj, who examined ML at the Ba Mission Hospital, gave evidence for the prosecution while you gave evidence for your-self. The assessors by majority found you guilty and this court having reviewed the evidence, conquered with the opinion of the Assessors, found you guilty and convicted you of the said two counts.
3. It was proved during the trial that, being the step father of the ML how you abused, sexually assaulted and raped her over a period of time.

4. You were the step father of the complainant during the alleged period. The complainant was looking at you as a father for her protection and security. Instead of protecting her, you preyed upon her.
5. The two offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two (2) offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

6. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the aggregate sentence to be imposed on you.
7. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
8. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...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.”

9. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

10. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

11. It is safely assumed that the tariff set for rape of a child is 11 to 20 years of imprisonment. [**Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018)]. The facts of the Aitcheson’s case are not much different to the present case other than on a few points. In that the starting point was 14 years. Yet in that there were two victims and both were accused’s biological daughters. In this case, the sole victim was a step-daughter. It is arguable which is more serious as the child in this case has been extra vulnerable. In consideration of the objective seriousness and the fact that this is an aggregate sentence, I commence the sentence at 12 years of imprisonment.

12. The aggravating factors are as follows:

- (i) This was a serious and abhorrent series of crime.
- (ii) There was gross abuse and breach of trust.
- (iii) The victim was accused’s stepdaughter and she was extremely vulnerable due to her age and other circumstances.
- (iv) The impact of the crime on the victim was traumatic.
- (v) These crimes took place at the family’s own house.

13. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 3 years. Now your aggregate sentence is 15 years of imprisonment.

14. Your counsel has indicated that you have no previous convictions or any pending cases. Therefore, I will consider you as a first time offender. Further it is submitted that you have cooperated with the police. It is claimed that you provided shelter for the victim and her mother on charitable terms. As you have used the victim's mother as your de-facto partner, I am not convinced that you deserve much merit for that charity.

15. In considering that you are a first time offender and the rest of the mitigating factors submitted on your behalf I deduct three years from the above.

16. Accordingly, I sentence you to a term of imprisonment of 12 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 9 years of that sentence.

17. Section 24 of the Sentencing and Penalties Act reads thus:

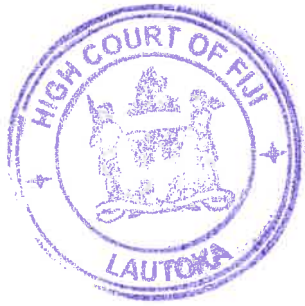
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

18. You have been in remand custody for this case for a single day in 2016. Thereafter, you have been in remand custody since 03rd of March 2020, to this date. Accordingly, you have been in custody for a period of about 03 months and 10 days. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 3 months and 10 days should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

19. In the result, you are sentenced to a term of imprisonment of 12 years with a non-parole period of 09 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	11 years and 08 months and 20 days.
Non-parole period	-	08 years and 08 months and 20 days.

20. You have 30 days to appeal to the Court of Appeal if you desire so.



Chamath S. Morais
JUDGE

At Lautoka
11th June 2020

Solicitors for the State : ***Office of the Director of Public Prosecutions, Lautoka.***
Solicitors for the Accused : ***Jiten Reddy Lawyers, Suva***