

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 126 OF 2019

THE STATE

v.

JAMES GOVIND SWAMY

Counsel: Ms S. Prakash for Prosecution
Mr. S. Nand for Defence

Date of Judgment: 27 September 2023

Date of Sentencing hearing: 19 October 2023

Date of Sentence: 20 October 2023

(The name of the complainant is suppressed. She is referred to as AR)

SENTENCE

1. Mr. James Swamy, you stand convicted after trial of one count of Rape on the following information.

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

JAMES GOVIND SWAMY on the 30th day of May, 2019 at Lautoka in the Western Division, penetrated the vagina of AR, with his penis, without her consent.

2. The victim was 16 year old child at the time of the offence. You sent a friend request to the victim on Facebook. She accepted the request although she had not known you before. Then you started messaging her and you managed to persuade her to come near a store close to her home at night. You came in a car to the place arranged by you and asked her to sit in the back seat of the car. Then you drove the car to an isolated place and, having removed her clothes, you forcefully inserted your penis into her vagina without her consent.
3. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years' imprisonment. [Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
4. In selecting your sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victim, I would select the starting point. The final sentence will be determined after making due adjustments for the aggravating and the mitigating factors.
5. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children, expect elders and relatives in a domestic setting to care and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.

6. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that, if anyone yield to this crime will meet with severe punishments.
7. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 11 years from the bottom range of the tariff as the first step in the sentencing process.
8. I identified the following aggravating and mitigation factors with the help of the submissions:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 37 years old at the time of the offence, when your victim was a child of 16 years.
- (b). The attack was premediated.

Mitigating Factors:

- (a). In mitigation, your counsel informed that you are a Tobacco Control Officer employed at Lautoka City Council. You are living with a *de-facto* partner while paying maintenance to your ex-wife and three children who are still schooling. Personal circumstances are of little mitigatory value.

(b). You do not have any previous convictions. You have maintained a clear record over the past 40 years. I have considered the character certificate tendered by the Pandit

9. I add 01 years and 01 month to the starting point of 11 years for above mentioned list of aggravating factors to arrive at an interim sentence of 12 years and 01 month imprisonment. I reduce 1 year for mitigating factors to arrive at a sentence of 11 years and 01 month imprisonment.
10. According to the State, you had been in remand roughly for one month. The remand period is deducted from your sentence to arrive at a final sentence of 11 years' imprisonment.
11. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 9 years.
12. Summary

Mr. James Govind Swamy, you are sentenced to an imprisonment term of 11 years with a non-parole period of 09 years.

13. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge



20 October 2023

At Lautoka

Counsel:

- Office of the Director of Public Prosecution for State
- Nand Lawyers for Defence