

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 83 of 2024

STATE

V

SUSHIL CHAND KUMAR

Counsel : Mr. T. Tuenuku for the State
: Mr. R. Dayal for the Accused

Date of Trial : 3 – 4 April 2025

Date of Judgment : 9 May 2025

Date of Sentencing Hearing: 23 May 2025

Date of Sentence : 6 June 2025

SENTENCE

1. Mr. Sushil Chand Kumar, on 9 May 2025, after trial before this Court, you were convicted of two counts of raping your wife.
2. The factual basis upon which I sentence you today can be briefly stated.
3. On Sunday 14 July 2024, you were at home with your wife and two teenaged daughters. You paid a short social visit to your brother before returning home in the early evening. Your wife and daughters had already retired to bed. After eating dinner, you went to your bedroom where your wife appeared to be sleeping. You tapped her to wake her. She shrugged her shoulder to let you know that she did not welcome that. You forcefully pulled her top and she told you to leave her alone. You had been drinking. Your wife made it clear to you that she rejected your advances and did not wish to engage in any sexual

activity with you. You pushed your wife down and straddled her. When she refused to suck your penis, you forced your penis into her mouth regardless (count 1). You then penetrated her vagina without her consent (count 2).

4. Hearing a commotion, your 14-year-old daughter entered your bedroom.
5. There were further incidents later that night which are not relevant for present purposes.
6. I must now impose a just and proportionate sentence for the totality of your offending.

Prosecution sentencing submissions

7. The prosecution has filed helpful written submissions, and Mr. Tuenuku also addressed the Court at your sentencing hearing. The prosecution has drawn my attention to the accepted tariff for adult rape of 7 to 15 years' imprisonment. He has also urged upon me three factors which the prosecution says makes your offending more serious.
8. Firstly, you breached a relationship of trust when you raped your wife.
9. Secondly, you committed these offences when your children were present at home, albeit they did not witness the rapes.
10. Thirdly, and relatedly, your daughter was exposed to the immediate aftermath of your offending when she went into your bedroom.
11. Mr. Tuenuku informed the Court that your wife, who attended court for your sentencing hearing, has told him that she wishes to reconcile with you. It is her expressed wish that the Court does not impose a sentence of immediate imprisonment.
12. It is the experience of the courts that victims of domestic violence not infrequently withdraw support for the prosecution of their abusers, and will

often ask the court to show leniency. This raises a number of concerns to which I shall return below.

Mitigation submissions

13. On your behalf, Mr. Dayal has filed written submissions, and also addressed the Court at your sentencing hearing.
14. I have considered everything he advances on your behalf.
15. You are now 46 years old. You have two daughters from your first marriage who are still at school. You are a foreman at a local business earning enough to support your family.
16. You have no previous convictions and Mr. Dayal informs the Court that you are well-regarded at work and in the community.
17. Mr. Dayal also made the somewhat surprising submission that you are leading a happy married life with the complainant. When the Court pressed him on this assertion, Mr. Dayal was not able to articulate the manner in which the marriage could be sensibly described as “happy”.
18. Mr. Dayal emphasises that the Court should promote your rehabilitation, and he urges the Court to impose a suspended sentence of imprisonment to that end.

Discussion

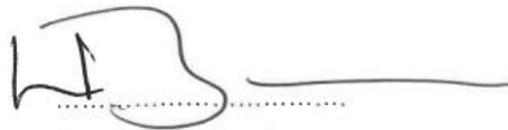
19. The maximum sentence for rape is life imprisonment. The established tariff for adult rape is 7 to 15 years’ imprisonment. Clearly, rape is considered to be a very serious offence.
20. Whilst sentences imposed by other sentencing courts provide broad guidance, there is a limit to the assistance that any sentencing court may glean from sentences imposed in other cases for similar offending. Every sentencing exercise is heavily fact specific, and must be approached as such.

21. It is also noteworthy that the accepted tariff for the offences you have committed is wide. My task is to determine a just and proportionate sentence having appropriate regard to the accepted range that properly reflects all the circumstances of your offending behaviour.
22. The Court has not been assisted in this task by Mr. Dayal's unrealistic suggestion that a suspended sentence would be appropriate in all the circumstances of this case. When he was pressed on this at the sentencing hearing, Mr. Dayal quite properly acknowledged that a custodial sentence of a length that would allow the Court to consider suspension would not be appropriate.
23. Turning my attention to the purposes of sentencing as set out in section 4 of the Sentencing and Penalties Act ("the Act"), I have had regard to a combination of the statutory purposes. Because this is a case involving domestic violence, I have had specific regard to the factors set out in section 4(3) of the Act.
24. Section 4 (3) (e) of the Act requires that I have regard to the conduct of the offender towards the victim and any matter which indicates whether he accepts responsibility for the offence and its consequences. It was in this context that I queried Mr. Dayal's reference to the "*alleged offence*" in his written mitigation submissions. My concern was that you appear to continue to refuse to accept responsibility for your offending. Certainly, nothing was advanced on your behalf that suggested you had any remorse or genuine insight into your offending behaviour. After all, it was your defence at trial that your wife had fabricated wicked lies against you.
25. Of course, a lack of remorse is not an aggravating factor. It does, however, feed into your prospects of rehabilitation. In this regard, I note that Mr. Dayal assured me that you do now accept responsibility for your offending.
26. My principal focus in determining a just and proportionate sentence in this case is to ensure that the sentence I impose adequately signifies that the Court

and the community denounce the commission of sexual offending in a domestic setting. This type of offending is all too prevalent in our society.

27. I have decided that the best way to achieve a just and proportionate sentence reflecting the totality of your offending against your wife is to take the offending charged as count 1 as the lead offence, to treat the other offending reflected in count 2 as a serious aggravating factor, and to impose a concurrent sentence on that count.
28. I take 7 years' imprisonment as the starting point for your sentence on count 1. Balancing the aggravating and mitigating factors, I make a downward adjustment to 6 years' imprisonment.
29. It is important that I make it clear that in determining 6 years' imprisonment to be just and proportionate in all the circumstances of this case, I have had no regard to your wife's expressed wish that I do not impose a sentence of immediate imprisonment.
30. It is important that the Court spells out unambiguously that a sentence imposed for an offence committed within a domestic context is to be determined by the seriousness of the offence, not by any expressed wishes of the victim. This principle must be observed for a number of reasons, including:
 - (i) The court is sentencing on behalf of the wider public.
 - (ii) No victim is responsible for the sentence imposed.
 - (iii) There is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender.
 - (iv) The risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.
31. In order to encourage your rehabilitation, I fix your non-parole period at 4 years.

32. I remanded you in custody on 9 May 2025, which means that you have served 1 month of your sentence.
33. Accordingly, I sentence you as follows:
- Count 1 – 6 years’ imprisonment.
Count 2 – 6 years’ imprisonment concurrent.
34. Mr. Kumar, for the reasons I have explained, the sentence I impose is 6 years’ imprisonment, less the time you have already served on remand. Your non-parole period is 3 years 11 months from today.
35. You may appeal to the Court of Appeal within 30 days.



Hon. Mr. Justice Burney

At Labasa

6 June 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Rikshal Dayal Lawyers for the Accused**