

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 70 OF 2015

STATE

-v-

NAND KISHORE

Counsel : Ms. L. Latu for the State  
Ms. K. Vulimainadave for Accused

Date of Judgment : 25<sup>th</sup> July, 2017

Date of Sentence : 28<sup>th</sup> July, 2017

(Name of the Victim is suppressed. She is referred to as KV)

SENTENCE

1. Mr. Nand Kishore, you were charged with the following information and tried before three assessors.

## Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

## Particulars of Offence

NAND KISHORE, on the 22nd day of April 2015 at Elevuka, Ba, in the Western Division, penetrated the vagina of KV, a child under the age of 13 years, with his finger.

2. Assessors unanimously found you guilty of Rape as charged. Court accepted assessors opinion and convicted you of Rape. You now come before this Court for sentence.

3. The facts of the case in brief were that:

The Victim was 8 years old at the time of the offence. She came back from school and went outside to play with her two sisters. You were renovating landlord's house in the adjoining compound and called them to pour water on cement. Victim's mother sent the Victim and her sister's to help you. You then went inside landlord's house and asked the Victim to pick rubbish in the room. The Victim went into the room, but there was no rubbish. You quickly closed all the windows of the room and told Victim to bend down and look properly. When she bent down, you pulled her shorts and poked her vagina with your finger. She screamed when she felt pain. She was frightened. She pulled up her shorts and ran outside. Then she reported the matter to her mother. Doctor who examined the Victim observed redness around her vaginal area and found her hymen not to be intact. In the caution interview, you admitted penetrating Victim's vagina with your finger.

4. The maximum penalty for Rape is life imprisonment.

5. Tariff for juvenile rape is now well settled. The Supreme Court in Anand Abhay Raj CAV003.2014 confirmed that the tariff for rape of a juvenile should be 10-16 years' imprisonment.

6. Rape is a serious crime. By prescribing life imprisonment for Rape, the law makers expect Courts to impose harsher punishment on rape offenders. Rape of

children is a very serious offence indeed and it seems to be very prevalent in Fiji. Courts and the society cannot condone any form of sexual assault on children. Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

7. Having considered the gravity of the offending, I pick eleven (11) years' imprisonment as the starting point.

#### **Aggravating Circumstances**

- The age gap between the Accused and the Victim is nearly 51 years. In principle, the younger the child and the greater the age gap between the offender and the victim, the higher the sentence should be.
- Victim's mother sent the Victim to help you trusting you as an elderly carpenter. You breached that trust.
- According to the medical report and Victim Impact Statement, Victim has suffered physically and psychologically. She lost her virginity at very young age. Offending left a scar and trauma for the rest of her life.
- You have not saved the young girl from giving evidence and reliving the ordeal.
- You planned to commit this offence.

#### **8. Mitigating Circumstances**

- You admitted the offence and cooperated with police.
- You are a first offender and have maintained a clear record.

9. I add two (2) years to the starting point for above mentioned aggravating factors bringing the interim sentence to thirteen (13) years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence to twelve years' (12) imprisonment. I deduct further 45 days to reflect your remand period. Your final sentence is 11 years' and 9 1/2 months' imprisonment.

10. You are a 63 year old carpenter. The medical report tendered on your behalf shows that you are a cancer patient. Character certificates and letters filed by your Counsel show that you have been maintaining a good relationship with

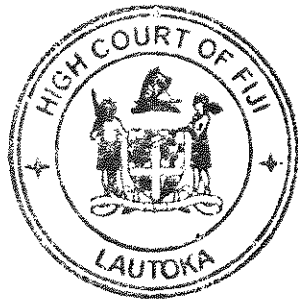
your villages and helping your community. It is unfortunate that you have committed this offence in your twilight years of your life. Court has no option but to send you to prison not only to punish you but also to deter others from committing this type of abhorrent crimes.

11. Considering Section 18 (1) of the Sentencing and Penalties Act, I impose a non-parole period of nine (9) years.

**Summary**

You are sentenced to 11 years and 9 1/2 months' imprisonment. You are eligible for parole after serving nine (09) years in prison.

12. 30 days to appeal to the Fiji Court of Appeal.



  
Aruna Aluthge

Judge

At Lautoka

28<sup>th</sup> July, 2017

**Counsel:**

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Accused