

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC. 149 of 2014**

**STATE**

**V**

**NITENDRA PRASAD BILASH**

**Counsel** : Mr. M. Vosawale and Ms. S. Sharma for State  
Ms. S. Narayan and Ms. M. Chand for the Accused

**Dates of Hearing** : 23<sup>rd</sup> May to 25<sup>th</sup> May 2016

**Date of Summing Up:** 26<sup>th</sup> May 2016

**Date of Judgment** : 30<sup>th</sup> May 2016

**Date of Sentence** : 30<sup>th</sup> May 2016

**SENTENCE**

1. Nitendra Prasad Bilash, you were charged with the following offence;

*Statement of offence*

**Rape:** Contrary to Section 207 (1) and (2)(b) of the Crimes Decree, No. 44 of 2009.

*Particulars of offence*

**NITENDRA PRASAD BILASH** on the 22<sup>nd</sup> day of July 2013, at Nabua, in the Central Division penetrated the vagina of Achal Prasad with his fingers without her consent.

2. After trial, the assessors returned with a unanimous opinion that you are not guilty of the above offence. Upon considering the summing up and the evidence adduced

during trial, this court decided not to conform to the opinion of the assessors and found you guilty of rape as charged and convicted you accordingly.

3. In brief, the victim who was 16 years old came to your house on 22/07/2013 to look after your daughter, on your request. Victim's father used to cut grass in your compound and her mother used to do house work. On the aforementioned date, after you returned from work and while your daughter was taking a shower, you sat next to the victim, removed her pants and the underwear and penetrated the victim's vagina with your fingers without her consent. As a result, victim's hymen was ruptured. At the time of the offence you were 38 years old.
4. Pursuant to section 207(1) of the Crimes Decree 2009 read with section 3(4) of the Sentencing and Penalties Decree 2009, the maximum punishment for rape is life imprisonment. It is settled that the sentencing tariff for rape of a child victim is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
5. I take 10 years imprisonment as the starting point of your sentence.
6. Victim's parents used to work for you. You were known to the victim and her family. You had power and control over the victim and her family as they earned their bread and butter by working for you. Both the victim and her mother had their trust in you. On the day in question the victim who was 16 years old at that time came to babysit your daughter who was 10 years old, on your request. You were responsible for the victim's care and protection during the time material to this case as the victim was at your house looking after your daughter. You seized the opportunity when your daughter was taking a shower, to rape the complainant who was also a child just 6 years older than your daughter.
7. I consider the following as aggravating factors;
  - a) breach of trust;
  - b) you had authority over the victim who was vulnerable at the material time; and
  - c) the age gap between you and the victim which is 22 years.

8. Your counsel says that you cooperated with the police during investigation and at the time of arrest. However according to the evidence of the 4<sup>th</sup> prosecution witness who was the investigating officer, he had cooperated with you as he mentioned that one reason for the delay in conducting your cautioned interview was that he gave you time as you were working at the Suva City Council.
9. Your counsel also says that you have a 13 year old daughter and your family depends on you, that you are supporting your mother who is 63 years old, you are a person of good character who is respected in the neighbourhood, you have served the Suva City Council for 13 years with a good employment record and that you have no previous convictions.
10. I consider the following as mitigating factors;
  - a) you have no previous convictions;
  - b) your unblemished service for 13 years to the public;
  - c) you support your 63 year old mother; and
  - d) you are 41 years old, married with one daughter;
11. Considering the aggravating factors, I add 4 years to the starting point and deduct 4 years considering the mitigating factors.
12. Accordingly, I sentence you to 10 years imprisonment. In terms of section 18 of the Sentencing and Penalties Decree 2009, I order that you are not eligible to be released on parole till you serve 08 years of that sentence.
13. Section 24 of the Sentencing and the Penalties Decree 2009 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.”*
14. You were arrested with regard to this matter on 13/05/2014. You were granted bail on 29/05/2014. Accordingly, you have spent a total period of 16 days in custody. This

period of 16 days shall be regarded as a period of imprisonment already served by you in respect of the sentence imposed on you this day.

15. In the result, you are sentenced to an imprisonment term of 10 years with a non-parole period of 08 years. Considering the time spent in custody, the remaining period to be served is;

Head Sentence – 09 years, 11 months and 14 days

Non-parole period – 07 years, 11 months and 14 days

16. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera  
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Divendra Lawyers, Suva.