

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 0080 of 2018
(High Court Action No. HAC 41 of 2016)

BETWEEN : MOHAMMED RASHEED
Appellant

AND : THE STATE
Respondent

Coram : Chandra, RJA

Counsel : Mr P Kumar for the Appellant
Mr A Jack for the Respondent

Date of Hearing : 5 November, 2019

Date of Ruling : 27 November, 2019

RULING

- [1] The Appellant was charged with three counts of rape contrary to section 207(1) and (2) (a) and (3) of the Crimes Act, 2009.
- [2] He was convicted and sentenced on 27 July 2018 to 15 years of imprisonment with a non-parole period of 12 years.
- [3] He filed a timely notice of appeal setting out 9 grounds of appeal which notice was subsequently amended, abandoning his appeal against conviction and appealing only against his sentence. The grounds of appeal are:
 - “1. The learned Sentencing Judge erred in law and fact in imposing a sentence of 17 years without considering the facts and circumstances of this case;*
 - 2. The Learned Sentencing Judge erred in law and principle when he acted upon the wrong aggravating features thereupon enhancing the sentence;*
 - 3. The Learned sentencing Judge erred in law and fact by not properly discounting the sentence for the Appellant being a First Offender. And also, no discount on religious mitigation.*
 - 4. The adding and increasing the term by 7 years for the aggravating features and reaching a final sentence of 15 years is harsh and excessive.”*
- [4] The victim was a child under the age of 13 years. The Appellant was the uncle of the victim. The counts were representative counts. The victim had become pregnant and it was then that it was revealed that the Appellant had raped the victim. The age difference between the Appellant and the victim was about 18 years.
- [5] The learned Trial Judge had in sentencing the Appellant chosen a starting point of 10 years, added 7 years for the aggravating features and deducted 2 years for his clear record and the period he had been in custody in arriving at the final sentence of 15 years with a non parole term of 12 years.

- [6] Since the Appellant has in his amended notice of appeal opted to abandon his appeal against conviction, he would have to file his notice of abandonment regarding same.
- [7] In dealing with the grounds of appeal regarding sentence, it is necessary that the Appellant should show that the learned High Court Judge had erred in sentencing the Appellant by acting upon a wrong principle, or allowing extraneous matters to guide or affect him, or had mistaken the facts or failed to take into account some relevant consideration. Naisua v State [2013] FJSC 14; CAV 0010.2013 (20 November 2013).
- [8] In respect of grounds 1, 2 and 4 which have been taken up together in the written submissions of the Appellant, it has been urged that the learned High court Judge had erred in taking up the pregnancy issue as an aggravating factor as no evidence had been produced to prove and/or confirm that the Appellant was the baby's father. Further it was possible to obtain DNA evidence to establish paternity, which had not been done.
- [9] The learned High Court Judge in his sentencing Judge had referred to the relationship between the Appellant and the victim and the issue of pregnancy as aggravating factors, which were relevant considerations and therefore there was no error in the sentencing exercise.
- [10] Regarding ground 3, the submission has been made that no proper discount had been given for the fact that the Appellant was a first offender and that no discount was given for religious mitigation as the Appellant had been a Muslim priest.
- [11] The Appellant had been given a discount for the fact that the Appellant was a first offender and there is no error. Further, the learned High Court Judge had taken into consideration the submission made on behalf of the Appellant that the Appellant being a Muslim priest should be taken as a mitigating factor and ruled that he would not consider that to be a mitigating factor which I do not consider to be an error.
- [12] The application for leave to appeal against sentence would therefore fail.

Orders of Court:

- (1) *The Appellant should file a notice in terms of Rule 39 of the Court of Appeal Rules regarding the abandonment of his appeal against conviction;*
- (2) *Leave to appeal against sentence is refused.*



Suresh Chandra

Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL