

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 151 of 2014

STATE

V

ABDUL MANAN

Counsel : Ms. L. Latu for the State.
: Mr. M. Raratabu for the Accused.

Dates of Hearing : 5, 6, 7 June, 2017
Closing Speeches : 8 June, 2017
Date of Summing Up : 12 June, 2017
Date of Judgment : 13 June, 2017
Date of Sentence : 27 June, 2017

SENTENCE

[1] In a Judgment delivered on 13 June, 2017 the court found the accused guilty and convicted him for four counts of rape as per the following information:-

FIRST COUNT

Statement of Offence

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

Particulars of Offence

ABDUL MANAN, on the 18th day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

ABDUL MANAN, on the 20th day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

ABDUL MANAN, on the 22nd day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

ABDUL MANAN, on the 27th day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

[2] The brief facts were as follows:

The accused is the father-in-law of the complainant, the complainant was living at her in-law's house for eight years after her marriage to the accused's son. The complainant informed the court of four

occasions that is 18 October, 2014, 20 October, 2014, 22 October, 2014 and 27 October, 2014 of what the accused had done to her.

- [3] On 18th October, 2014 the accused came into the kitchen where the complainant was and told her to accompany him to his bedroom when the complainant refused he started forcing her by forcefully pulling her hand. He took the complainant to his bedroom and locked the door.
- [4] In the bedroom the accused told the complainant to take off her clothes, she refused the accused then threatened her that he will kill her if she does not take off her clothes. The accused forcefully removed the complainant's clothes then pushed her onto the bed. In the bed the accused started touching all over her body from top to bottom, sucked her breast and thereafter started licking her vagina.
- [5] While the accused was doing all this, the complainant was shouting but no one came to save her. The complainant pushed the accused but he did not stop he came on top of her and inserted his penis inside her vagina. The accused was having sexual intercourse until he ejaculated.
- [6] On 20th October, 2014 the complainant was resting on the bed which was in the front porch of the house. The accused came and told the complainant to accompany him to his bedroom but she refused. The accused then forcefully pulled her and took her to his bedroom. In the bedroom the accused removed all her clothes and pushed her onto the bed. He started to lick her vagina and then inserted his penis into her vagina he was doing this until he ejaculated.

- [7] The third incident happened on 22nd October, 2014 at about 11.00am, the complainant was in her bedroom the accused came and sat on the bed and asked the complainant whether she was packing her clothes. The complainant replied that she was tidying her clothes which were in the drawer. At this time the accused started forcefully holding her hands and took her to his bedroom.
- [8] In the bedroom the accused removed her clothes forcefully and pushed her on the bed. The accused sucked her breast and started licking her vagina, the way in which the accused was licking her vagina it was very painful. The complainant tried to “free” herself but could not the accused came on top of her and inserted his penis into her vagina until he ejaculated.
- [9] The complainant did not tell anyone about what the accused had done to her because she was afraid the accused had threatened her if she told anyone he will kill her.
- [10] The last incident happened on 27th October, 2014 at about 12 midday, the complainant was in the kitchen cutting potatoes and egg plants for lunch, the complainant’s youngest daughter was sleeping. After a while the accused came in the kitchen the complainant was washing the utensils he held her from behind. The complainant tried to “free” herself the accused pulled her towards the window and then took her to his bedroom.
- [11] The accused locked the door after pushing her on the bed, removed all her clothes and started touching her body, sucking her breast then started licking her vagina. The way he was licking her vagina the complainant felt pain.

- [12] The complainant tried to “free” herself but she could not. After the accused finished licking her vagina he came on top of her and inserted his penis into her vagina until he ejaculated.
- [13] The complainant went and woke her youngest daughter who was sleeping and together with her daughter the complainant ran to her aunt’s house who she calls “chachi” to tell her what had happened to her. At her aunt’s house the complainant told her aunt whatever was happening to her.
- [15] The complainant’s aunt Movina called the complainant’s husband who was in Rakiraki at the time and informed him of what the complainant had relayed to her. The matter was reported by the complainant’s husband at the Rakiraki Police Station.
- [16] Both counsel have filed written sentencing submissions for which the court is grateful.
- [17] Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
- (a) The accused is 64 years of age, Farmer;
 - (b) The accused is married;
 - (c) First offender;
 - (d) A person of good character;
 - (e) The accused is an active member of the community and neighbourhood and always willing to assist when needed;
 - (f) The accused has assisted various religious organizations in Fiji in whichever way he could;
 - (g) He has cooperated with the Police during the course of investigation.

[18] The Counsel also relies on a character reference given on behalf of the accused which states that there haven't been any complaints or grievances against the accused who comes from a well known family.

[19] I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs. The State, CAV 0003 of 2014* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

[20] The aggravating features are:

(a) Breach of trust

The accused was the father-in-law of the complainant. The complainant spent 8 years in the family considering the relationship that existed between the accused and the complainant the accused committed a gross breach of this trust. The accused also took advantage of the vulnerability of the complainant since he knew his wife was in New Zealand and his son was at work.

(b) Threats to complainant

The accused had threatened the complainant that he will kill her if she informed anyone about what he was doing to her. The complainant was afraid of the threats made to her by the accused.

[21] The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. In *Mohammed Kasim v The State, Criminal Appeal No. 21 of 1993; (27 May 1994)*, the Court of Appeal had stated:

“...We consider that in any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than the starting point.”

[22] Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

[23] I am satisfied that the four offences of rape for which the accused stands convicted are a series of offences of the same or similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the four offences.

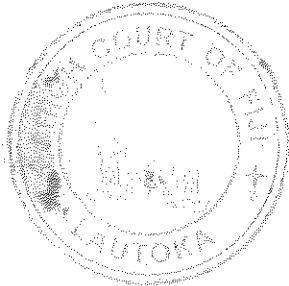
- [24] Bearing in mind the seriousness of the offences committed I take 9 years imprisonment as the starting point of the aggregate sentence. I add 3 years for the aggravating factors bringing the interim total to 12 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value I find the accused good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
- [25] I note the accused has been in remand for about 22 days. I exercise my discretion to further reduce the sentence for the remand period by 1 month in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 9 years and 11 months.
- [26] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
- [27] Under section 18 (1) of the Sentencing and Penalties Act, I impose 8 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
- [28] Mr. Manan you have committed a serious offence against the victim who trusted and respected you like her father. As the father-in-law of the victim you were supposed to be a role model for the family.

[29] I am sure the complainant will not easily forget what you had done to her, your actions were disgusting to say the least the sanctity of the relationship between you and the victim was breached by you for your own selfish lust.

[30] I am satisfied that the term of 9 years and 11 months imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.

[31] In summary I pass an aggregate sentence of 9 years and 11 months imprisonment for the four offences of rape that the accused has been convicted of with a non-parole period of 8 years to be served before the accused is eligible for parole.

[32] 30 days to appeal to the Court of Appeal.



At Lautoka

27 June, 2017

A handwritten signature in black ink, appearing to read "Sunil Sharma".

Sunil Sharma
Judge

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs. Iqbal Khan & Associates for the Accused.