

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 176 of 2015

STATE

V

AMIT KRISHNA GOUNDAR

Counsel : Ms. S. Kiran for the State.
: Ms. N. Sharma with Ms. R. Nabainivalu for the
Accused.

Dates of Hearing : 14, 15 May, 2018
Closing Speeches : 16 May, 2018
Date of Summing Up : 17 May, 2018
Date of Judgment : 18 May, 2018
Date of Sentence : 28 May, 2018

SENTENCE

(The name of the complainant is suppressed she will be referred to as "SK").

1. In a judgment delivered on 18 May, 2018 this court found the accused guilty and convicted him for one count of rape and one count of criminal intimidation as per the following amended information:

COUNT ONE

Statement of Offence

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

Particulars of Offence

AMIT KRISHNA GOUNDAR on the 14th day of June, 2015 at Nadi in the Western Division, penetrated the vagina of "SK" with his penis without her consent.

COUNT TWO

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to section 375 (2) (a) of the Crimes Act.

Particulars of Offence

AMIT KRISHNA GOUNDAR on the 14th day of June, 2015 at Nadi in the Western Division without lawful excuse and with intent to cause alarm to "SK" threatened the said "SK" with a cane knife.

The brief facts were as follows:

2. The victim was a special needs child (intellectually impaired and a slow learner) who resided with her mother, her two brothers and her step father the accused at Mulomulo, Nadi. At the time of the offending the victim was aged 14 years and 7 months.
3. On 14 June, 2015 the victim's mother left home for work at 7am and the accused came home from work at 8am. After a while the accused gave some money to the victim's brothers to go to the shop to buy sweets.
4. The victim was left in the house with the accused. After washing the dishes the victim went into the bedroom to fold clothes after a while the accused came into the bedroom. After locking the door of the bedroom the accused removed the clothes of the victim and forcefully inserted his penis into the vagina of the victim. The penetration was painful and blood had come out of the victim's vagina. The victim wanted to shout but the accused had put

a piece of cloth inside her mouth so that she could not shout. The victim did not consent to what the accused had done to her.

5. The victim also tried to go outside to tell someone about what the accused had done to her but the accused threatened her with a cane knife saying that he will chop her if she told anyone about what he had done to her. The victim was afraid when she saw the cane knife.
6. Next day when the victim went to school she informed her teachers about the accused doing something wrong to her. The matter was reported to the Social Welfare Department and then to the police.
7. Both counsel have filed written sentence submissions for which the court is grateful.
8. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused is a first offender;
 - b) He was 30 years of age at the time of the offending but is now 35 years;
 - c) Was employed as a car wash boy;
 - d) He is the sole bread winner of his family and his elderly parents are depended for support;
 - e) He is a person of good character;
 - f) Accused seeks the leniency of the court;
 - g) He did not use any physical or aggressive force on the victim to make her submit to the unlawful act and had cooperated with the police.
9. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs.- The State, CAV 0003 of 2014 (20 August, 2014)* that the personal

circumstances of an accused person has little mitigatory value in cases of sexual nature.

10. The aggravating features are:

(a) Breach of Trust

The victim knew the accused who was her stepfather. The accused breached the trust of the victim by his actions. The accused knew the victim was a special needs child who was innocent and vulnerable at the time of the offending.

(b) Planning

The accused systematically sent the victim's two brothers to the shop to buy sweets so that the victim would be alone in the house with him. There is a certain degree of planning by the accused in what he wanted to do that day.

(c) Age Difference

The victim was 14 years and 7 months whereas the accused was 30 years of age. The age difference was substantial.

11. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in the decision of *Anand Abhay Raj* (supra) has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.

12. It is the duty of the court to protect children from sexual exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.

13. There has also been an increase in sexual offences involving offenders who are matured adults.
14. Mr. Goundar you have committed very serious offences on an unsuspecting, vulnerable and a special needs child you cannot be forgiven for what you had done to this child who was your step-daughter. You have not only scarred the victim's life forever but have brought shame to the sanctity of the relationship.
15. It is unacceptable to note the manner in which you had breached the trust of this child no amount of repentance will bring back what she had lost. From the Victim Impact Assessment it is noted that after her complaint the victim's mother had left her and has not been in contact with her since then. The victim has been taunted by her family which has affected her relationship with them.
16. Section 17 of the Sentencing and Penalties Act states:

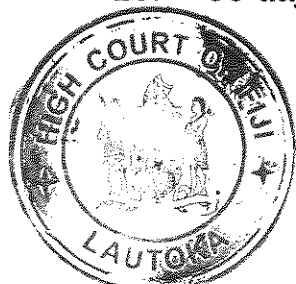
“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment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

18. After assessing the objective seriousness of the offences committed I take 12 years imprisonment as the starting point of your aggregate sentence. I add 5 years for the aggravating factors, bringing an interim total of 17 years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value I find his good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
19. I note from court file that the accused was remanded for 4 months and 22 days. I exercise my discretion to reduce the sentence for the remand period by five months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 14 years 7 months imprisonment.
20. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the head sentence of imprisonment for the count of rape and criminal intimidation is 14 years and 7 months imprisonment.
21. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on a victim who was a special needs child aged 14 years 7 months compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
22. Under section 18 (1) of the Sentencing and Penalties Act, I impose 12 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.

23. I am satisfied that the term of 14 years and 7 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.

24. In summary I pass an aggregate sentence of 14 years and 7 months imprisonment with a non-parole period of 12 years to be served before the accused is eligible for parole.

25. 30 days to appeal to the Court of Appeal.



At Lautoka

28 May, 2018

Sunil Sharma
Judge

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.