

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 205 of 2013

STATE

V

SOHEB NASIR ALI

Dates of Trial : 4 and 5 February 2019

Date of Judgment : 7 February 2019

Date of Sentence : 8 February 2019

Ms. P Lata with Mr. Alvin Singh for the State

Mr. Anil Singh with Miss Koroitamudu for the Accused

SENTENCE

- 1.] On the 23rd October 2013, a mother returned home from her work unexpectedly early, to find her 12 year old daughter lying on her bed with an older boy. She was unsurprisingly angry and beat and berated the pair and even went as far as to report the dalliance to the Police.
- 2.] The mother was further shocked when a routine medical examination of her daughter revealed that the young girl was no longer *virgo intacta*. The girl thereupon told the mother that the same boy had forcibly raped her two weeks earlier.
- 3.] The boy was subsequently arrested, charged with rape of an under 13 year old and is the convicted accused in these proceedings.

- 4.] The two young people met at a Youth Club in the middle of 2013 and became casual friends. On the 8th October 2013 she was 12 years and 11 months. She told the Court that the accused, then aged 19, came to her home when she was alone to borrow some computer equipment. He followed her into her bedroom where he forced himself upon her.
- 5.] In mitigation, Mr. Anil Singh tells the Court that he has a clear record both before the offence and to this day and that he has in the interim married with a two year old daughter. He is employed as a carpenter earning \$150 per week. He is now 25 years old.
- 6.] He spent 6 weeks in remand whilst awaiting trial. He co-operated with the Police when arrested by making admissions to the offence.
- 7.] Counsel asks that the long delay in bringing this matter to hearing – a delay including two aborted hearings – be considered to his advantage.

8.] **The Law**

Section 207 of the Crimes Act provides for a maximum penalty of life imprisonment for rape and s.207 (3) stipulates that carnal knowledge of a child under 13 cannot be consented to.

- I. Section 214 creates the offence of defilement of a child under 13 and also has a maximum penalty of life imprisonment. Those convicted of defilement have until now avoided the harsh penalties for rapes of children now meted out to those convicted of rape.
- II. The State however charged Rape and he is convicted of rape, the Court having believed the girl. The accused will be sentenced for Rape accordingly.
- III. In the case of Aitcheson CAV 0012 of 2018 the Supreme Court has determined that the tariff band for rapes of children should be a term of imprisonment of between 11 and 20 years.

9.] Mitigation

- I. The facts of this case are out of the ordinary. The perpetrator was not a family member and he wasn't in a special position of trust. He was a casual friend made over a few months at a Youth Club.
- II. The girl was just one month short of her 13th birthday.
- III. There is no evidence of psychological damage to the young lady. I saw her give evidence and now she appears to be very controlled, unemotional and looking forward to continuing her family life in Canada where her husband is now employed.
- IV. Even at the time of the offence, she subsequently allowed the young man back into her home when she was again alone and they spent an afternoon playing computer games on her bed before Mother found them. The offence seems to be the result of friendship ruined by lust.
- V. The young man himself is now married with a young child and keen to pursue his married life whilst at the same time supporting his very sickly parents. He is reasonably young at 25 years old and has never before offended.
- VI. As Mr. Singh submits, he is not the typical picture of a predator preying on an underage girl.
- VII. The accused has had the case hanging over him for over 5 years now and he has suffered the stress of two trials being aborted through no fault of his own.

10.] Sentence

- I. Despite this overwhelming mitigatory background, the legislature and the public at large would expect the forcible defiling of a 12 year old to be punished, but not to the extent of the usual 11-20 year sentencing band.

- II. I take a starting point for this offence of 6 years imprisonment. There are no aggravating features apart from the crime itself and for the mitigation outlined above, (including his clear record and the time he has spent in remand custody) I deduct a period of 3 years meaning that the sentence he will serve is a term of imprisonment of three years.
- III. In the circumstances, the Court declines to fix a minimum term he should serve before he is eligible for parole.



A handwritten signature in blue ink, appearing to read "Paul K. Madigan". The signature is written in a cursive style with a large initial "P".

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Paul K. Madigan
Judge

8th February, 2019
At High Court Lautoka