

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 165 of 2015

STATE

V

ROHIT RIKASH CHAND

Counsel : Ms. R. Uce for the State.
: Ms. S. Khan and Mr. T. Kaloulasulasu for the
Accused.

Dates of Hearing : 25, 26, 29 April, 2019
Closing Speeches : 30 April, 2019
Date of Summing Up : 30 April, 2019
Date of Judgment : 06 May, 2019
Date of Sentence : 21 May, 2019

SENTENCE

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

1. In a judgment delivered on 6th May, 2019 (in the absence of the accused since he had absconded) this court found the accused guilty and convicted him for one count of rape as per the following information:

COUNT ONE

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act, 2009.

Particulars of Offence

ROHIT RIKASH CHAND, on the 14th day of August, 2015 at Nadi, in the Western Division, penetrated the vagina of “**DG**”, with his finger, a child under the age of 13 years.

2. The brief facts are as follows:
3. On 14th August, 2015 the victim “DG” who was 8 years of age was returning home from town with her grandmother in a mini bus. While the victim was standing in the bus the accused who was sitting beside the victim’s grandmother asked her grandmother if the victim could sit on his lap. The victim’s grandmother agreed.
4. As the bus was travelling the victim who was wearing a dress felt the accused touched her vagina with his finger from underneath her dress. He kept on touching her vagina throughout the journey. When the accused inserted his finger into the victim’s vagina she felt bad after the bus stopped near her house the accused quickly left the bus. The victim was scared so she did not tell her grandmother what the accused was doing to her in the bus.
5. The victim told her grandmother about what the accused had done to her after she got off the bus. The matter was reported to the police and the victim was medically examined.
6. Both counsel filed their written sentence and mitigation submissions for which this court is grateful.
7. The following personal details and mitigation have been presented by the counsel for the accused:

- a) The accused was 23 years of age at the time of the offending and he is a Carpenter by profession;
 - b) He is married, his wife suffers from diabetes and she needs attention;
 - c) He also resides with his parents, his mother has high blood pressure and his father is a heart patient;
 - d) He earns approximately \$130.00 per week and supports his family;
 - e) He is a very active and helpful member of the community and he always lends a hand when needed in Community Projects and in raising funds for families, communities, churches and temples.;
 - f) The accused fully co-operated with the Police during investigations;
 - g) He is a member of the Nadovi Korovuto Gyan Ramayan Mandali, conducts prayers and participates in religious activities.
8. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v 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.

AGGRAVATING FEATURES

9. The aggravating features are:

- a) Victim was unsuspecting and naive

The victim was 8 years and 4 months at the time of the offending. The accused took advantage of the fact that the victim was unsuspecting and naive when she sat on the lap of the accused at his request.

- b) Age Difference

The victim was 8 years of age and the accused was 23 years the age difference was substantial.

c) Victim Impact Statement

The victim impact statement was served on the defence they have not raised any objections to the contents of the victim impact statement. According to the victim after the incident she became fearful, was unable to concentrate in school work and was scared of going to school alone.

d) Injuries caused to the victim

The specific medical finding by the examining doctor was that the perforated hymen or tear in the hymen was caused by trauma.

10. 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 *Gordon Aitcheson vs. The State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.
11. 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. There has been an increase in sexual offences involving children.
12. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely there is no two ways about it. Children are entitled to live their lives free from any form of physical or emotional abuse. When an accused sexually abuses a child, they should not expect any leniency but condign punishment from the court to mark the society's outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.

13. The Supreme Court in *Mohammed Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) has stated the above in the following words at paragraph 54 that:

“It is useful to refer to the observation expressed by the Fiji Court of Appeal in Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”

14. Madigan J in *State v Mario Tauvoli* HAC 027 of 2011 (18 April, 2011) said:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

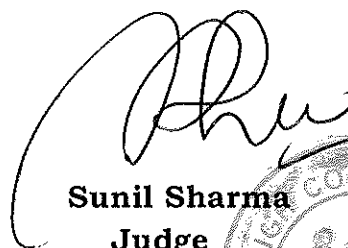
15. The Supreme Court in *Felix Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015) mentioned a long list of factors that should be considered in punishing offenders of child rape cases. Those factors would include:

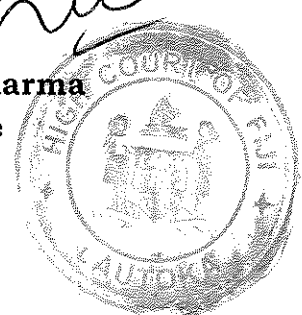
- (a) *whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) *whether there had been a breach of trust;*
- (c) *whether committed alone;*
- (d) *whether alcohol or drugs had been used to condition the victim;*
- (e) *whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*

- (f) *whether the impact on the victim had been severe, traumatic, or continuing;*
- (g) *whether actual violence had been inflicted;*
- (h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) *whether the method of penetration was dangerous or especially abhorrent;*
- (j) *whether there had been a forced entry to a residence where the victim was pre sent;*
- (k) *whether the incident was sustained over a long period such as several hours;*
- (l) *whether the incident had been especially degrading or humiliating;*
- (m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
- (n) *Time spent in custody on remand.*
- (o) *Extent of remorse and an evaluation of its genuineness;*
- (p) *If other counts or if serving another sentence, totality of appropriate sentence.*

16. After assessing the objective seriousness of the offence committed I take 12 year imprisonment (lower range of the scale) as the starting point of the sentence. I add 6 years for the aggravating factors. The interim sentence is now 18 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value. It is noted that the accused has three previous convictions for abduction, defilement and indecent assault. The accused does not receive any discount for good character. The sentence is reduced by 6 months for the mitigation presented. The sentence now stands at 17 years and 6 months imprisonment.

17. The accused has been remanded for 11 days, I deduct 14 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The sentence now is 17 years 5 months and 16 days imprisonment.
18. Mr. Chand you have committed a serious offence against the victim. She was unsuspecting and naive you cannot be forgiven for what you have done to this victim.
19. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence 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 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.
20. Under section 18 (1) of the Sentencing and Penalties Act, I impose 16 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.
21. In summary I pass a sentence of 17 years and 5 months and 16 days imprisonment with a non-parole period of 16 years to be served before the accused is eligible for parole.
22. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



Lautoka

21 May, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Iqbal Khan & Associates for the Accused.