

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 107 of 2016

STATE

V

SEMESA SACERE

Counsel : Mr. S. Babitu for the State.
: Ms. E. Radrole for the Accused.

Dates of Hearing : 05 and 06 August, 2019
Closing Speeches : 07 August, 2019
Date of Summing Up : 07 August, 2019
Date of Judgment : 08 August, 2019
Date of Sentence : 22 August, 2019

SENTENCE

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

1. In a judgment delivered on 8th August, 2019 this court found the accused guilty and convicted him for one representative count of rape as per the following information:

COUNT ONE
REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009.

Particulars of Offence

SEMESA SACERE, between the 1st day of January, 2012 and 31st day of December, 2012 at Sigatoka in the Western Division, penetrated the vagina of “**MN**” with his penis without her consent.

2. The brief facts were as follows:

On 3rd May, 2012 the victim who was 16 years of age was alone at her grandparents home when the accused came and asked for the whereabouts of her grandparents.

3. The victim told the accused that her grandparents were not at home. Upon hearing this, the accused told the victim to remove her clothes since he wanted to touch her body so he told her to lie down and then started touching and kissing her. After a while the accused went over the victim and forcefully penetrated her vagina with his penis. The victim told the accused not to do this to her since it was painful but the accused did not listen to her he continued having forceful sexual intercourse with the victim.

4. The accused had forceful sexual intercourse with the victim on three occasions without her consent. On each occasion the accused threatened the victim not to tell anyone as a result she did not tell anyone, however, in the year 2015 the victim’s mother came to live with her, she then told her mother about what the accused had done to her. The accused is the maternal grandfather of the victim by virtue of being

the brother of the victim's maternal grandfather. The matter was reported to the police by the victim's mother.

5. Both counsel filed their written sentence and mitigating submissions for which this court is grateful.
6. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - (a) The accused was 70 years of age at the time of the offending;
 - (b) He is a first offender;
 - (c) Married with 4 children;
 - (d) Supports his family financially;
 - (e) Seeks the court's leniency.
7. 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 FACTORS

8. The aggravating factors are as follows:

- (a) Breach of Trust

The victim and the accused are related to each other, the accused is the maternal grandfather of the victim who lived in the same village as the victim. The victim was alone, vulnerable and unsuspecting, the accused breached the trust of the victim by what he did to her. The victim never expected what the accused had done to her particularly when the accused was a matured

relative who is supposed to be a role model for the family. The accused disregarded the sanctity of the relationship that existed between the accused and the victim.

(b) Age difference

The accused was 70 years at the time whereas the victim was 16 years of age. The age difference of 54 years is substantial.

(c) Victim Impact Statement

According to the victim impact statement the victim has been emotionally and psychological affected by what the accused had done to her. Whenever she saw the accused she used to recall what the accused had done to her but now wishes to move on with life. The victim's mother had observed that the victim became forgetful would be lost in her thoughts and also failed her form 6 examination after the incidents.

This court accepts that no expert evidence was led in respect of the emotional and/or psychological effect on the victim. However the contents of the victim impact statement cannot be ignored in light of the evidence given by the complainant and her mother. The harm caused to the victim was a direct result of what the accused had done to her (*see State vs. Afzal Khan, criminal case no. HAC 75 of 2016*).

REPRESENTATIVE COUNT

9. This court is mindful that the accused faces one representative count of rape. The evidence before the court was of three occasions of rape the accused cannot be punished for the other two occasions of rape under

the representative count but for one occasion only (see *Senilolokula vs. State, Criminal Petition No. CAV 0017 of 2017, (26 April, 2018)*).

10. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in the recent judgment of *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 abuse or exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.
12. There has been an increase in sexual offences involving offenders who are known to the victim and are matured adults.
13. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely. 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 expect condign punishment to mark the society's outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.
14. 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.”

15. 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.”

16. 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 the 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 present;*
- (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.*

17. After assessing the objective seriousness of the offence committed I take 12 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 4 years for the aggravating factors arriving at an interim total of 16 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value, however, his good character being a first offender has substantive mitigating value. The sentence is reduced by 1 year to reflect good character and mitigation. The sentence now is 15 years imprisonment.

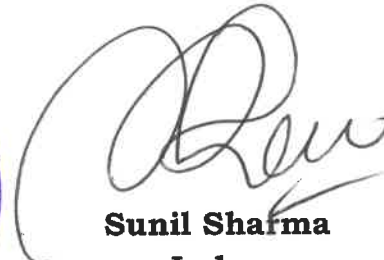
18. I note from the court file the accused was remanded for 3 months 22 days. In exercise of my discretion I reduce the sentence by 4 months in accordance with section 24 of the Sentencing and Penalties Act as a

period of imprisonment already served. The final sentence is 14 years 8 months.

19. Mr. Sacere, you have committed a serious offence against your granddaughter who was alone, unsuspecting and vulnerable whose house you used to frequent on a regular basis. At your advanced age you were supposed to be a role model but this was not to be due to your lust and sexual gratification. You cannot be forgiven for what you have done to this victim. Exposing a child to sexual activities at a time when they are in transition to maturity has a negative impact upon a child's development. Your conduct on the victim is unthinkable and deplorable a long term imprisonment is the only answer. Your advanced age is not a factor which will be viewed favourably you should have known better offenders cannot hide behind their age to receive a lenient sentence.
20. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim of 16 years of age 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.
21. Under section 18 (1) of the Sentencing and Penalties Act, I impose 11 years imprisonment 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 and to meet community expectations which is just in the circumstances of this case.
22. In summary I pass a sentence of 14 years 8 months imprisonment with a non-parole period of 11 years to be served before the accused is eligible for parole.

23. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

22 August, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.