

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 10 of 2020

STATE

V

VINOD CHAND

Counsel : Mr. S. Seruvatu for the State.
: Ms. S. Veitokiyaki and Mr. A. Kumar for the
Accused.

Date of Hearing : 27 June, 2023
Closing Speeches : 29 June, 2023
Date of Judgment : 30 June, 2023
Date of Sentence : 27 July, 2023

SENTENCE

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

1. In a judgment delivered on 30th June, 2023 this court found the accused guilty of one count of rape and convicted him accordingly.
2. The brief facts were as follows:

- a. The victim and the accused were husband and wife, from July, 2019 till December, 2019 although the victim and the accused were living under one roof they were not having any marital or sexual relationship. As a result they were sleeping in separate bedrooms.
 - b. On 28th December, 2019 at about 11pm the accused was drinking beer in the sitting room. The victim was in her bedroom, when she was going to the washroom the accused came from behind held her and swung her around. The victim sat on the floor in the hope that the accused would leave her.
 - c. The accused did not but pushed the victim on the floor pushed her chin upwards pressed her chest with both his hands and put one of his knees on her stomach. The victim at this time was struggling with the accused trying to free herself and at the same time was asking the accused to leave her. Due to the pressure on the chest the victim started to have short breath.
 - d. The accused told the victim to stay straight and be calm he then removed the victim's shorts and removed his shorts thereafter he forcefully penetrated his penis into the victim's vagina and had sexual intercourse. The victim did not consent to have sexual intercourse with the accused. The matter was reported to the police the next day the accused was arrested, caution interviewed and charged.
3. The state counsel filed written sentence submissions with the victim impact statement and the defence counsel filed mitigation for which this court is grateful.

4. The following personal details and mitigation was submitted by the counsel for the accused:
 - a) The accused is 61 years old;
 - b) First offender;
 - c) He looked after 4 children with the victim;
 - d) Is a Chef/Bus Driver by profession;
 - e) Was the sole breadwinner of the family;
 - f) Seeks leniency and mercy of the court.

5. 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.

AGGRAVATING FACTORS

6. The following aggravating factors are obvious in this case:

- a) Breach of Trust

The victim was the wife of the accused she trusted the accused that is why she was living with the accused in the same house despite their differences. The accused grossly breached the trust of the victim by his action.

- b) Victim was vulnerable

The victim was vulnerable, alone, helpless and unsuspecting the accused took advantage of this and sexually abused the victim in the middle of the night.

c) Prevalence of the offending

There has been an increase in sexual offence cases by people known to the victim. The accused was bold and undeterred in what he did to the victim.

d) Safety at home

The victim was supposed to be safe at home but this was not to be due to the actions of the accused.

e) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

- a) Is embarrassed by what the accused did to her;
- b) Is mentally scarred as a result of the incident;
- c) Continues to have flashback of what the accused did;
- d) Was ridiculed by family and friends for speaking out and complaining against the accused.

7. In respect of the victim impact statement the accused is objecting to its admissibility on the grounds that no expert evidence was called to substantiate the harm caused to the victim. There is no need for an expert to be called the contents of the victim impact statement signed by the victim cannot be ignored in light of the evidence given by her. The harm caused to the victim is a direct result of what the accused had done to her (*see State vs. Afzal Khan, criminal case no. HAC 75 of 2016*).

TARIFF

8. The maximum penalty for the offence of rape is life imprisonment and the accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.
9. In *Mohammed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May 1994*, the Court of Appeal had stated:

“We consider that at 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.”
10. Bearing in mind the objective seriousness of the offence committed I take 7 years imprisonment (lower range of the scale) as the starting point of the sentence. The sentence is increased for the aggravating factors, and reduced for mitigation and good character (character references taken into account). The accused is a first offender who comes to court as a person of good character. The personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive value.
11. I also note the accused has been in remand for about 8 months and 28 days, in exercise of my discretion and in accordance with section 24 of the


Sentencing and Penalties Act the sentence is further reduced by 9 months as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 8 years and 9 months imprisonment.

12. 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 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.
13. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 years and 9 months 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.
14. Mr. Chand you have committed a serious offence against the victim. She was your wife who trusted you and was staying in the same house as you. I am sure it will be difficult for the victim to forget what you had done to her. Due to your sexual gratification you did not care about the consequences of your actions on the victim. This court will be failing in its duty if a long term deterrent custodial sentence is not imposed. According to the victim impact statement the victim is emotionally and psychologically affected by the incident to the extent that she carries with her the flashback of the incident.
15. In summary, I pass a sentence of 8 years and 9 months imprisonment for one count of rape the accused has been convicted of with a non-parole period of 7 years and 9 months to be served before he is eligible for parole.

Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

16. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
28 July, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs Babu Singh & Associates, Nadi for the Accused.