

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 12 of 2020

STATE

V

CHRISTIAN ETHAN AMAFALA

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|-------------------------|---|---|
| Counsel | : | Ms. W.T. Elo and Mr. S. Seruvatu for the State. |
| | : | Mr. S. F. Koya and Ms. Radhia for the Accused. |
| Dates of Hearing | : | 29, 30 November, 01 December, 2023 |
| Closing Speeches | : | 05 December, 2023 |
| Date of Judgment | : | 05 December, 2023 |
| Date of Sentence | : | 21 December, 2023 |

SENTENCE

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

1. In a judgment delivered on 5th December, 2023 this court found the accused guilty of one count of indecent assault and three counts of rape as charged and he was convicted him accordingly.
2. The brief facts were as follows:
 - a) In the evening of 9th January, 2020 the accused met the victim 16 years of age who was with her friends at Wailoaloa. The accused was the best

friend of the victim's brother and both the victim and the accused knew each other.

- b) At about 1 am the next day the accused accompanied the victim to the flat of the victim's sister Edwina since he did not have a place to stay that night. After having her shower the victim laid down on the bed. The accused came and sat beside her and after sometime he started to forcefully rub her vagina with his hand. The victim was wearing a short black pants and shirt.
- c) Thereafter the accused got on top of her, she tried to push the accused but could not. The accused forcefully pushed the victim's legs towards her chest and at this time the accused managed to put his fingers through her shorts into her vagina. It was painful and she could not do much since the accused was stronger than her. After a while the accused got off the victim and went to have his shower. The victim was in pain lying on the bed since her vagina had started to bleed.
- d) In less than 5 minutes the accused came back and he again got on top of the victim. She tried to push the accused and she also punched him, the accused turned the victim around making her rest on her stomach and he grabbed both her hands and put it behind her back.
- e) Thereafter the accused with his other hand pushed down her pants below her thighs and after turning her around forcefully inserted his penis into the victim's vagina and had sexual intercourse. When the accused was finished he got off the victim and went to have his shower.

3. Finally, after washing himself the accused came back again. By this time the victim was weak and in pain. When the accused got on top of the victim

he held the back of her neck and forcefully inserted his penis inside her vagina and had sexual intercourse. The victim did not consent to what the accused had done to her that early morning.

4. The victim told her sister that the accused had raped her and the matter was reported to the police. The accused was arrested, caution interviewed and charged.
5. The state counsel filed sentence submissions and the defence counsel filed mitigation for which this court is grateful.
6. The following personal details and mitigation have been submitted by the counsel for the accused:
 - a) The accused is a first offender;
 - b) He is 24 years of age;
 - c) Married but separated from his wife and they have three young children;
 - d) Unemployed and a care giver for his elderly grandmother;
 - e) Is very attached to his 2 year old son;
 - f) Is a devoted church member;
 - g) Cooperated with the police during investigations;
 - h) Seeks leniency in sentencing.
7. 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

8. The following aggravating factors are obvious:

(a) Breach of Trust

The victim and the accused were known to each other. The accused grossly breached the trust of the victim by his actions. The victim (and her family) treated the accused like a family member.

(b) Victim was vulnerable

The victim was vulnerable, helpless and alone the accused knew this and he took advantage of the situation by continuing his unlawful conduct.

(c) Exposing a child to sexual abuse

The accused exposed the victim to a series of unexpected sexual encounters and sexual activity at a young age he basically robbed her of her innocence.

(d) Prevalence of the offending

There has been an increase in sexual offence cases on juvenile victims by adults known to them. The accused being the mature of the two did not give a second thought about what he was doing, he was bold and undeterred in what he did to the victim in a short span of time.

(e) Safety at the flat

The victim was at her sister's flat where she was supposed to be safe but this was not to be due to the actions of the accused.

TARIFF

RAPE

9. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in *Gordon Aitcheson vs. The State, (supra)* has confirmed the new tariff for the rape of a juvenile to be a sentence between 11 years to 20 years imprisonment.

INDECENT ASSAULT

10. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment (*Rokota vs. The State, criminal appeal no. HAA 0068 of 2002*).
11. 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.”

12. I am satisfied that the 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 four offences.

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 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 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.*

16. After assessing the objective seriousness of the offences committed I take 11 years imprisonment (lower end of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused has no previous convictions he comes to court as a person of good character. The sentence is reduced for other mitigation and good character.
17. I note from the court file that the accused was remanded for 1 month and 10 days, in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced as a period of imprisonment already served. The final aggregate sentence is 16 years 10 months and 20 days imprisonment.
18. Mr. Amafala you have committed serious offences against your best friend's sister who you were supposed to protect and look after. The victim was unsuspecting and vulnerable she trusted you that is why she allowed you to stay at her sister's house overnight since you did not have any place to stay that night.
19. You cannot be forgiven for what you have done to the victim. I am lost for words you are a shame to the society it was your lust for sexual gratification that you sexually abused the victim a number of times that early morning. Have you thought of the misery, shame and pain you have brought to the victim and her family. The sister of the victim told the court in her evidence that the victim was the baby of the family who did not look normal and cheerful when she saw the victim the same day of the incident. Considering the culpability of the accused and the circumstances of the offending a long term imprisonment is inevitable.

20. Rape is not only a physical act, it destroys the very soul of the victim, and also brings about a sense of hopelessness and anxiety which cannot be cured. You have scarred the life of the victim forever.
21. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was 16 years of age at the time 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.
22. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
23. Considering the above, I impose 13 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 and also meet the expectations of the community which is just in the circumstances of this case.
24. In summary, I pass an aggregate sentence of 16 years, 10 months and 20 days imprisonment with a non-parole period of 13 years to be served before the accused is eligible for parole.

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



Sunil Sharma
Judge



At Lautoka

21 December, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Siddiq Koya Lawyers, Nadi for the Accused.