

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 175 OF 2018

STATE

v

SHAHID ALI

Counsel : Ms S. Prakash for State
Mr S. Heritage, instructed by Iqbal Khan & Associates for Defence

Date of Judgment: 21 October 2024

Date of Sentence: 31 October 2024

(The name of the victim is suppressed. She is referred to as PK)

SENTENCE

1. Mr Shahid Ali, you were convicted after trial of one count of Rape and one count of Assault with Intent to Commit Rape on the following information filed by the Director of Public Prosecutions:

Count One

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of the Offence

SHAHID ALI on the 13th day of September 2018, at Sigatoka in the Western Division had carnal knowledge of **PK** without her consent.

Count Two

Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to
Section 209 of the Crimes Act 2009.

Particulars of Offence

SHAHID ALI on 13th day of September 2018 at Sigatoka, in the Western Division assaulted **PK** with intent to commit rape.

2. The facts of the case are that the victim is your niece. She was 13 years old at the time of the offence. You asked her to accompany you to pick up your wife from school. She trusted you and sat in the back seat of your car. Instead of going to school, you drove the car to the beach when she kept insisting that she be dropped off at home. You assured her that nothing would happen and told her that whatever happens would be between you and her and not to be told to anybody else. You parked the car near the sea and locked the doors. You got hold of her pants and pulled the driver's seat to the back. You came to the back seat and got hold of both of her shoulders. You made her lie down and came on top of her. You slapped her twice on her face. While she was still yelling, you put your penis inside her vagina and had carnal knowledge of her without her consent. When she kept yelling, you covered her mouth. You snatched her phone and threw it to prevent her from calling her mother. When you were driving her home after the rape, she jumped out of the vehicle when it slowed down at a hump. Two ladies who stopped by took her to the police station, where she made a complaint. She was medically examined by a doctor who found injuries and bruising on her face, neck, deltoid muscle and also on internal vaginal walls.

3. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years imprisonment¹. The maximum sentence for the offence of

¹ Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)

Assault with Intent Commit Rape is ten years imprisonment. The sentencing tariff ranges from 1 year to 4 years imprisonment².

4. In selecting the sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and the Penalties Act 2009 (SPA). I would also have regard to Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victim, I would select the starting point. The final sentence will be determined after making just adjustments for the aggravating and mitigating factors.
5. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on the Rights of the Child, to which Fiji is a party, and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children expect elders and relatives in a domestic setting to care for and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.
6. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. This Court must see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and others with similar impulses that if anyone yields to this crime will meet with severe punishments.
7. You have committed two offences in one transaction. According to Section 17 of the Sentencing and Penalties Act 2009, 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

² Jone Tabaka, Criminal Case No. 5 of 2013

character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for both offences.

8. Taking into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 11 years from the bottom range of the tariff.
9. With the help of the submissions filed by both sides, I identified the following aggravating and mitigation factors of your offence:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 24 years of age, whereas your victim was 13 years at the time of the offence.
- (b). You exploited the vulnerability of a child who is in a domestic relationship.
- (c). You warned the victim not to tell anyone about the incident and prevented her from calling her mother.
- (d). You breached the trust of the victim who is your niece.
- (e). There was some degree of pre-planning when you took the victim to the beach on a false pretence.
- (f) The evidence led at trial, and the Victim Impact Statement filed by the State speak volumes about how badly the victim suffered physically and emotionally during and after the offence. She received injuries and was hospitalised for one week for medical treatment. After the ordeal, she hated men and even refused to talk to male police officers at the police station. Her education was completely disrupted.

Mitigating Factors:

- (a). In mitigation, your counsel informed the Court that you are a young (now 29-year-old) casual digger operator working for a private company. You are the sole breadwinner of your family, looking after your elderly and sickly father. The

medical certificate attached shows that your father is seriously ill. Personal circumstances, however, are of little mitigatory value.

(b). According to the Record of Previous Convictions filed by the State, you have been fined \$ 300 for the offence of being in Possession of Illicit Drugs way back in 2017. Considering the nature of the previous offence, its triviality and the time elapsed from that offence, I consider you to be a first offender for this sentence. You have maintained a comparatively good character until you committed these offences. Because you have committed these offences by breaching the trust, you should earn very little in terms of good character.

(c) You have cooperated with police during the investigation and interview. You committed these offences on 13 September 2018. Almost six years have elapsed since then. I agree that, due to the delay, you have been subject to psychological and emotional stress and trauma pending a serious charge hanging over your head.

10. I add 04 years and one month to the starting point of 11 years for the above-mentioned list of aggravating factors to arrive at an interim sentence of 15 years and one-month imprisonment. I reduce 2 years for mitigating factors to arrive at an aggregate sentence of 13 years and one-month imprisonment.
11. According to the State, you had been in remand roughly for one month. I considered the remand period as part of your sentence already served and is deducted from your sentence to arrive at a final aggregate sentence of 13 years imprisonment.
12. You are young and a first offender. You completed a two-year vocational Training Course in Automotive Engineering conducted by the Ministry of Education in 2012. The character references show that you have served the public wholeheartedly as a social worker. Taking into consideration your potential for rehabilitation as a young first offender and the gravity and impact of the offence on society, I impose a non-parole period of 10 years.

13. Summary

Mr. Shahid Ali, you are sentenced to an aggregate imprisonment term of 13 years with a non-parole period of 10 years. You are eligible for parole when you have served 10 years in the correction facility.

14. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge



31 October 2024

At Lautoka

Counsel:

- Office of the Director of Public Prosecution for State

- Iqbal Khan & Associates for Defence