

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 58 OF 2014

STATE

v

MIRA SAMI

Counsel: Mr. Alvin Singh for State
Ms. K. Vulimainadave for Accused

Date of Judgment: 07th March, 2018

Date of Sentence: 12th March, 2018

SENTENCE

1. Mr. Mira Sami, you were charged with the following information and tried before three assessors.

First Count

Statement of Offence

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

Particulars of Offence

MIRA SAMI on the 21st day of August, 2013 at Lautoka in the Western Division penetrated the vagina of KRITIKA SHARMA with his penis, without her consent.

Second Count

(Representative Count)

Statement of Offence

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

Particulars of Offence

MIRA SAMI between the 22nd day of August, 2013 and the 6th day of November 2013 at Lautoka in the Western Division penetrated the vagina of KRITIKA SHARMA with his penis, without her consent.

Third Count

(Representative Count)

Statement of Offence

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

Particulars of Offence

MIRA SAMI between the 7th day of November, 2013 and the 8th day of November, 2013 at Lautoka in the Western Division, penetrated the vagina of KRITIKA SHARMA with his penis, without her consent.

2. Assessors unanimously found you not guilty on each count. Court rejected the opinion of Assessors and found you guilty on each count of Rape and convicted you accordingly. You now come before this Court for sentence.

3. Victim is your niece. She is from a broken family. Victim's stepmother sent the victim to your place for protection and wellbeing when your wife agreed to look after her. She was sent only for a visit. However, you persuaded her to work at your work place without the permission or knowledge of her parents. She was only 17 years old minor at that time.
4. On the first day of her work, you started touching her breast. On the second day, 21st August, 2013, you pushed her to the ground, took off all her clothes and forcibly inserted your erected penis inside her vagina and had sexual intercourse with her without her consent.
5. You covered her mouth and threatened to kill her if she told anything to anybody.
6. You repeated the same thing on 22nd, 23rd, 26th, 27th, 28th, 29th and 30th August 2013 when you forcibly had sexual intercourse with her without her consent.
7. Again between 7th and 8th of November 2013, you had sexual intercourse with her without her consent when your wife went to visit her grandparents in Ba.
8. The maximum penalty for Rape is life imprisonment.
9. Tariff for juvenile rape is now well settled. The Supreme Court in Anand Abhay Raj CAV003.2014 confirmed that the tariff for rape of a juvenile should be between 10-16 years' imprisonment.

10. Rape is a serious crime. By prescribing life imprisonment for Rape, the law makers expect Courts to impose harsher punishment on rape offenders. Rape of children is a very serious and it seems to be very prevalent in Fiji. It is appalling to see that rape rears its ugly head almost every day. Crime against women in general and rape in particular is on the increase in Fiji. It is an irony that while we are celebrating women's rights in all spheres on women's day, we show little or no concern for her dignity. Society has been regressing in its attitude towards women. Courts and the society cannot condone any form of sexual assault on women and children. Not only the offender but potential offenders must be deterred and therefore, the sentence must send a clear message to our society. The offender must be severely punished to ensure that our younger generation is safe and secure.

11. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.

12. Having considered the gravity and objective seriousness of the offence, and principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 12 years' imprisonment as the starting point.

13. I now consider the aggravating circumstances of your offence.
 - I. Victim was 17 year old minor at the time of offence. You were 40 years old and a fatherly figure to the victim in a position of authority. You sexually abused a child and had no regard to moral, cultural and spiritual values to be observed by an adult in our society.

 - II. Victim is from a broken family. She was in a vulnerable position at your house and workplace. You exploited her vulnerability.

- III. Victim is your niece. She was sent to your place for protection and wellbeing. You breached the trust reposed on you by the victim and their parents.
 - IV. You did everything at your disposal to conceal this monstrous crime. You used force to cover her mouth and threatened to kill her if she told anything to anybody. Finally an abortion was facilitated to put everything under carpet.
 - V. You ejaculated inside her vagina and made her pregnant.
 - VI. You repeatedly raped the victim over a period of time.
 - VII. According to the Victim Impact Statement, victim has suffered physically and psychologically. You have not only violated victim's privacy and personal integrity, but caused psychological as well as physical harm and destroyed her whole personality.
 - VIII. You have not saved the young girl from giving evidence and reliving the ordeal. Victim was re-traumatized in the trial process.
14. I am now looking at mitigating circumstances that your Counsel has submitted to this Court.
- I. You are a 45- year- old father of three children, earning \$ 200 per week from your job at upholstery shop. You are the sole breadwinner of your family. I have considered your personal circumstances although they have a very little mitigatory value.
 - II. You are a first offender and have maintained a clear record.
 - III. You have cooperated with police during investigations.

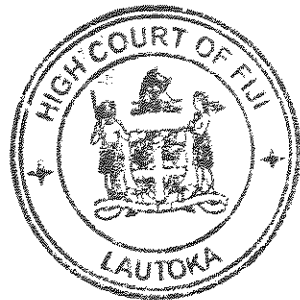
15. I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 15 years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence to one of 14 years. According to the submission filed by the State, you were in remand approximately for six weeks before conviction. Post- conviction remand period is 5 days. I deduct further 45 days to reflect your remand period. Your final sentence is 13 years' 10 months and 15 days' imprisonment.

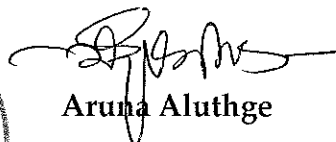
16. Considering Section 18 (1) of the Sentencing and Penalties Act, and principles enunciated in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non-parole period of 10 years.

Summary

17. You are sentenced to 13 years' 10 months and 15 days' imprisonment. You are eligible for parole after serving 10 years in prison.

18. 30 days to appeal to the Fiji Court of Appeal.





Aruna Aluthge

Judge

At Lautoka

12th March, 2018

Counsel:

- Office of the Director of Public Prosecution for State

- Legal Aid Commission for Accused