

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 100 of 2021

STATE

V

ROMANU BATIRATU

Counsel : Mr. J. Nasa for the State.
: Ms. L. Volau and Mr. F. Singh for the Accused.

Dates of Hearing : 20, 21 March, 2023
Closing Speeches : 22 March, 2023
Date of Judgment : 23 March, 2023
Date of Sentence : 12 April, 2023

SENTENCE

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

1. In a judgment delivered on 23th March, 2023 this court found the accused guilty of one representative count of rape and convicted him accordingly.
2. The brief facts were as follows:
3. The accused is the biological father of the victim. They were living together at Qina Settlement, Nawaka, Nadi. In the year 2021 the victim was 16 years of age.

4. Between 1st April, and 18th September, 2021 the accused had forceful sexual intercourse with the victim on several occasions.
5. The accused would go and lie on top of the victim while she slept in her bedroom and touched both her breasts. The victim was scared of the accused who forced her to take off her shorts and panty. When the victim told the accused not to do all this to her since he was her father the accused threatened the victim to take her things and leave the house.
6. Thereafter the accused forced the victim to put her legs up he then moved closer and forcefully penetrated his penis into the victim's vagina. On each occasion the accused would have forceful sexual intercourse with the victim for about 6 minutes. The victim did not consent to what the accused was doing to her. As a result of what the accused was doing to her the victim got pregnant. On 21st September, 2021 the matter was reported to police, the accused was arrested, caution interviewed and charged.
7. The state counsel filed his sentence submissions including the victim impact statement and the defence counsel filed mitigation for which this court is grateful.
8. 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 38 years of age;
 - c) Was a Security Officer;
 - d) Earned about \$150.00 per week;
 - e) Co-operated with the police during investigations;

- f) Promises not to reoffend and if given the opportunity he will reform himself.
9. 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

10. The following aggravating factors are obvious:

(a) Breach of Trust

The victim is the biological daughter of the accused. The accused grossly breached the trust of his daughter by his actions and also abused the sanctity of the relationship that existed between the two. The Supreme Court in *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (02 November, 2018)* at paragraph 62 of the judgment endorsed the comments of the trial judge as follows:

“...Parents are the only trusted and dependable persons that a child has in her growing tender years. Turning that trusted dependable person into a monstrous demon who penetrated in to the innocent childhood of the child and destroy it with his own lustful sexual satisfaction, would undoubtedly jeopardise the child’s entire future life. Therefore, incest is a rape by extortion, in which a child’s very childhood becomes a weapon used to control her”.

(b) Planning

The accused had planned what he did, he knew the victim was naive, innocent and vulnerable and scared of him so he continued with his unlawful conduct.

(c) Age Difference

At the time the victim was 16 years of age whereas the accused was 37 years of age. The age difference is substantial.

(d) Exposing a child to sexual abuse

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

(e) Victim Impact Statement

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

- a) Has limited herself from socialising with other people;
- b) Stigma/ blame from family and relatives;
- c) Dropped out of school due to her pregnancy;
- d) Low esteem and self-blame;
- e) Got separated from her siblings and was staying at a relative's house.

(f) Prevalence of the offending

There has been an increase in sexual offence cases on juvenile victims by mature adults known to the victim. The accused being the mature of the two did not give a second thought about what

he was doing to the victim. The accused was bold and undeterred in what he was doing to the victim.

(g) Safety at home

The victim was at home in her bedroom where she is supposed to be safe but this was not to be due to the actions of the accused.

11. 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.
12. It is shocking to note the manner in which the accused had committed the offences on the victim. 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 family members sexually abuse children, violating the Domestic Violence Act, they should not expect any mercy from this court. The punishment ought to be such that it takes into account the society's outrage and denunciation against such conduct.
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.*

REPRESENTATIVE COUNT

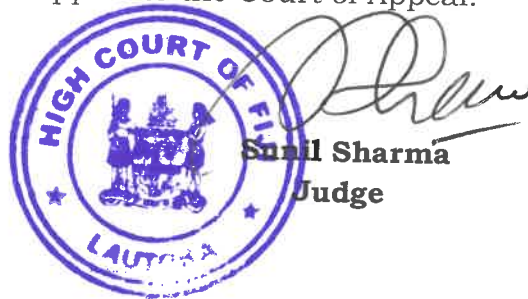
16. Although the accused is charged with one representative count of rape the evidence before the court was that there were two incidents of rape per day from 1st April, 2021 to 18th September, 2021.
17. The accused cannot be punished for the other occasions of rape but for one occasion only as charged (*see Senilokula v State, Criminal Petition no. CAV 0017 of 2017 (26 April, 2018)*).
18. After assessing the objective seriousness of the offence committed I take 11 years imprisonment (lower end of the scale) as the starting point of the 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 mitigation and good character.
19. I also note from the court file that the accused was remanded for 1 year 6 months and 20 days, in accordance with section 24 of the Sentencing and Penalties Act and in exercise of my discretion the sentence is

reduced by 1 year and 7 months as a period of imprisonment already served. The final sentence is 16 years and 5 months imprisonment.

20. Mr. Batiratu you have committed a serious offence against your daughter who you were supposed to protect and care. The victim was vulnerable and helpless you cannot be forgiven for what you have done to her. I am lost for words you are a shame to the society it was due to your lust for sexual gratification that you targeted your eldest daughter. What of kind of a parent are you? Have you thought of the misery, shame and pain you have brought to your daughter, no amount of repentance can get the victim to lead a normal life. You are a menace and a disgrace to the society a long term imprisonment term is inevitable.
21. 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 your daughter forever. There is no doubt that a positive and happy childhood memories contribute towards child development which is an inspiration for the future. Unfortunately, this is not so for the victim.
22. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim who was the accused's daughter aged 16 years 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.
23. 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.

24. Considering the above, I impose 14 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.
25. In summary, I pass a sentence of 16 years and 5 months with a non-parole period of 14 years to be served before the accused 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.
26. 30 days to appeal to the Court of Appeal.



At Lautoka

12 April, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.