

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 174 of 2013

STATE

V

PAULA SOLI

Counsel : Ms. S. Naibe and Ms. R. Uce for the State.
: Ms. V. Narara and Ms. N. Sharma for the Accused.

Dates of Hearing : 21, 22, 24, March, 2017
Closing Speeches : 24 March, 2017
Date of Summing Up : 27 March, 2017
Date of Judgment : 29 March, 2017
Date of Sentence : 31 March, 2017

SENTENCE

[The name of the Complainant is suppressed, the complainant will be referred to as "SL"]

[1] In a judgment delivered on 29 March, 2017, this court found the accused guilty and convicted him for the lesser offence of attempt to commit rape.

[2] The brief facts were as follows:

- [3] On 10 May, 2013 at about 11pm the complainant left a birthday party at Teci Village to go home to Bukama Village with a couple. Whilst walking to Bukama Village the accused accompanied the complainant and the couple.
- [3] The couple namely Esira and Nai were walking in front after sometime the accused pulled the complainant's blue backpack saying that they should follow the couple. This made the complainant afraid because by this time Esira and Nai had gone far ahead.
- [4] At this time the accused pulled the complainant's backpack and pushed her to the ground, the push was hard enough for the complainant to fall to the ground. She fell on the ground face up and she felt pain on her back.
- [5] The complainant was afraid when the accused removed her sulu, shorts and panty. After taking off his shorts the accused was about to insert his penis into the vagina of the complainant. The complainant felt his penis and also saw the penis of the accused was outside his shorts. The complainant felt pain in her thighs because the accused was pressing her thighs and forcing himself on her. Thereafter the accused was pushing the complainant down by pressing both her arms.
- [6] The complainant did not consent to what the accused had done to her. She pushed the accused and ran away to Esira and Nai. Two days later the complainant informed her sister Sioana of what had happened to her.
- [7] The matter was reported to the Police on behalf of the complainant on 12 June, 2013.
- [8] Both counsel have filed helpful written submissions for which the court is grateful.
- [9] Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
- (a) The accused is 27 years of age, married with 3 children aged 4 years, 3 years and one year respectively;
 - (b) His wife stays home whilst he works as a Diver and earns \$100.00 per week; and

(c) He is a first offender.

[10] I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs The State. CAV 003 of 2014* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

[11] The aggravating features are:

(a) Breach of Trust

The victim is related to the accused, she is the accused's aunty by virtue of the fact that she is the cousin of the accused's father hence the accused betrayed the sanctity of the relationship and breached the trust of the victim. The incident happened in the middle of the night when the victim was alone with the accused. Furthermore the victim was helpless and vulnerable at the time.

(b) Age Difference

At the time of the offending the victim was 17 years of age and a Primary School Student which was known to the accused whereas the accused was 25 years of age, the age difference is 8 years.

(c) Use of Force

Force was used in pushing the victim on the ground making her fall and pressing her thighs and arms.

(d) Victim Impact Statement

According to the Victim Impact Statement the victim has been mentally disturbed since the incident and was also embarrassed when it became known in the Village of what the accused had done to her. After this incident the victim never went back to school because of the shame the incident had brought to her and the family.

[12] The maximum punishment for the offence of attempt to commit rape is 10 years imprisonment.

[13] Mr. Soli you have committed a serious offence against a victim who trusted you and I am sure it will be quite difficult for her to forget what you had done to her. The trauma endured by the victim at such a young age cannot be ignored.

[14] After spending an enjoyable time at a birthday party which you also attended the victim would not have expected such a shocking experience on her way home. Your behaviour towards the victim was deplorable.

[15] The tariff for the offence of attempt to commit rape is well established which ranges from 1 year to 5 years imprisonment. In *Jioji Aunima vs. The State*, criminal appeal no. HAA 033 of 2001 (27 June 2001) Shameem J. stated:-

“Applying all these principles, I find that the accepted tariff for Attempted Rape in the Fiji Courts ranges from 12 months imprisonment to 5 years imprisonment. A starting point should then be chosen according to the seriousness of the offending.

[16] In *Rusiate Bulimaiwai vs. The State*, criminal appeal no. HAA 0068 of 2005, Shameem J. mentioned the various factors which would result in higher sentences as follows:

“... In Joji Aunima v. State, criminal appeal 33 of 2000, I identified the tariff for attempted rape as being 12 months imprisonment to 5 years imprisonment. Sentences at the upper end of the tariff should be imposed where gratuitous violence is inflicted, where a weapon is used, where there is a gross breach of trust or where there is a large age gap between the complainant and the offender. In Hari Chand v State (supra) I upheld a 3 year term for the attempted rape of his daughter-in-law by the offender. There was no gratuitous violence but there was a gross breach of trust.”

STARTING POINT

[17] In selecting a starting point I am guided by the Court of Appeal in *Laisiasa Koroivuki v The State*, criminal appeal no. AAU0018 of 2010 at paragraphs 26 and 27 the following is stated:

“[26] The purpose of tariff in sentencing is to maintain uniformity in sentences. Uniformity in sentences is a reflection of equality before the law. Offender committing similar offences should know that punishments are even

handedly given in similar cases when punishments are even-handedly given to the offenders, the public's confidence in the criminal justice system is maintained.

[27] In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.

- [18] Considering the seriousness of the offending I select a starting point of 2 ½ years imprisonment being in the lower range of the tariff. I add 3 years for the aggravating factors bringing an interim total of 5 ½ years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value, however, I find your good character has substantive mitigating value. I therefore reduce the sentence by 1 ½ years bringing the sentence to 4 years imprisonment.
- [19] From the court record I note that the accused was remanded for 136 days which equates to about 4 ½ months in remand. I exercise my discretion to reduce the remand period by 5 months as a term of imprisonment already served. The final sentence is now 3 years 7 months.
- [20] Having considered section 4 (1) of 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 nature.
- [21] Under section 18 (1) of the Sentencing and Penalties Act I imposed 2 ½ years imprisonment 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 offender which is just in the circumstances of this case.

[22] In summary the accused is sentenced to 3 years 7 months imprisonment with a non-parole period of 2 ½ years to be served before the accused is eligible for parole.

[23] 30 days to appeal to Court of Appeal.



Sunil Sharma

Judge

**At Lautoka
31 March, 2017**

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.