

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 55 of 2014

STATE

V

SAMUELA NAVUNISARAVI

Counsel : Mr. S. Seruvatu with Ms. S. Kiran for the
State.
: Ms. P. Chand with Mr. R. Goundar for the
Accused.

Dates of Hearing : 22 to 25, 28 August, 2017.
Closing Speeches : 29 August, 2017.
Date of Summing Up : 30 August, 2017.
Date of Judgment : 31 August, 2017.
Date of Sentence : 11 September, 2017.

SENTENCE

(The names of the complainants are suppressed they will be referred to as "AB" also known as "EAB" and "GM" respectively).

[1] In a Judgment delivered on 31 August, 2017 this court found the accused guilty and convicted him for two representative counts of rape as per the following amended information:

COUNT ONE

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to section 149 and section 150 of the Penal Code, Cap 17.

Particulars of Offence

SAMUELA NAVUNISARAVI between the 1st day of October, 2006 and the 30th day of November, 2006 at Nadi, in the Western Division, had carnal knowledge of “**AB**” also known as “**EAB**” an 8 year old child without her consent.

COUNT TWO

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to section 149 and section 150 of the Penal Code, Cap 17.

Particulars of Offence

SAMUELA NAVUNISARAVI between the 1st day of October, 2006 and the 30th day of November, 2006 at Nadi, in the Western Division, had carnal knowledge of “**GM**” an 8 year old child, without her consent.

[2] The brief facts were as follows:

The complainants “GM” and “AB” were students of a Primary School, in the year 2006 they were 8 years of age and in class 3. The accused was their class teacher.

- [3] Between 1st October, 2006 and 30th November 2006 the accused took the complainant "GM" to the last cubicle in the classroom. The complainant had some errors in her book. The accused made the complainant sit on his lap facing the other side he opened her legs with his legs thereby spreading it apart. The accused would pull the side of her underwear and insert his penis inside her vagina.
- [4] When the accused inserted his penis into the complainant's vagina she felt his penis and it was painful. This happened on more than one occasion. The complainant did not consent to what the accused had done to her. She did not tell anyone about what the accused was doing to her because she didn't know at that time what he was doing was right or wrong.
- [5] The other complainant "AB" informed the court that between 1st October, 2006 and 30th November, 2006 the accused would take her to the last cubicle in the classroom and make her sit on his lap with the book in front of them. The accused would ask questions and at the same time shift her panty to one side since her panty was too tight the accused would pull it down to her ankle.
- [6] Whilst sitting on the lap of the accused the complainant would be facing the other side. The accused would rock her back and forth by holding her waist with his hands whilst rocking she could feel his penis on the top layer of her vagina which was her clitoris.
- [7] The complainant was scared but did not say anything. This happened on more than one occasion. The complainant did not agree to what the accused had done to her.

- [8] Both counsel filed written submissions in respect of Sentencing.
- [9] Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
- (a) The accused was 26 years of age at the time of the offending;
 - (b) First offender;
 - (c) He is looking after his 2 year old child;
 - (d) He looks after his elderly parents, his mother is 64 years old and his father is 62 years old;
 - (e) He is also looking after and supporting his eldest sister who is an epileptic patient.
- [10] I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs The State, CAV 0003 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 victims were 8 years of age and in class 3 the accused was their class Teacher. The accused by his actions committed a gross breach of trust. The victims were innocent and vulnerable the accused systematically took advantage of this and exploited the victims.
 - (b) Age difference
The victims were 8 years of age and the accused was 26 years of age. The age difference was substantial.

[12] The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The Supreme Court of Fiji in *Anand Abhay Raj (supra)* has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.

[13] 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.”

[14] I am satisfied that the two offences for which the accused stands convicted are offences of the same or 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 two offences.

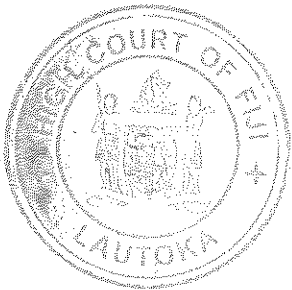
[15] After assessing the objective seriousness of the offences committed I take 11 years imprisonment as the starting point of the aggregate sentence. I add 5 years for the aggravating factors, bringing an interim imprisonment of 16 years imprisonment since the personal circumstances and family background of the accused has little mitigatory value I find the accused good character has substantive mitigating value. I therefore reduce the sentence by 2 years.

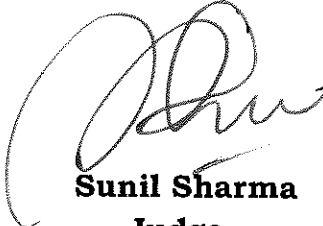
- [16] I note that the accused has been remanded for about 12 days in this matter in exercise of my discretion I further reduce the sentence by two weeks accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 13 years 11 months and 2 weeks imprisonment.
- [17] Under the aggregate sentencing regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for the two offences of rape is 13 years 11 months and 2 weeks.
- [18] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the two victims who were 8 years of age 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.
- [19] Under section 18 (1) of the Sentencing and Penalties Act, I impose 11 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 which is just in the circumstances of this case.
- [20] Mr. Navunisaravi you have brought disgrace to the noble profession of Teachers by your selfish lust on the very students you were supposed to teach and protect. You have brought misery not only to the victims but to their families as well. I note from the victim impact assessment reports that the victims have lost their self-esteem because of you. An immediate custodial sentence is warranted in the circumstances of the case.

[21] I am satisfied that the term of 13 years 11 months and 2 weeks imprisonment 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 offence.

[22] In summary I pass an aggregate sentence of 13 years 11 months and 2 weeks imprisonment with a non-parole period of 11 years to be served before the accused is eligible for parole.

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




Sunil Sharma
Judge

At Lautoka

11 September, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.