

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 73 of 2017

STATE

V

MUNESHWAR REDDY

Counsel : Ms. P. Lata and Ms. R. Uce for the State.
: Ms. J. Singh [LAC] for the Accused.

Dates of Hearing : 1, 2, 3, 4, 5 April, 2019
Closing Speeches : 8 April, 2019
Date of Summing Up : 8 April, 2019
Date of Judgment : 9 April, 2019
Date of Sentence : 23 April, 2019

SENTENCE

1. In a judgment delivered on 9 April, 2019 this court found the accused guilty and convicted him for two (2) counts of rape as per the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MUNESHWAR REDDY, on the 3rd March, 2017 at Nadi in the Western Division, penetrated the vagina of **ANGEL NARAYAN SCHMEKEL**, with his penis, without her consent.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

MUNESHWAR REDDY, on the 3rd March, 2017 at Nadi in the Western Division, penetrated the mouth of **ANGEL NARAYAN SCHMEKEL**, with his penis, without her consent.

2. The brief facts were as follows:

The victim Angel Narayan Schmekel a foreign national in August, 2015 came to Fiji with a view to start a business. It was during this visit she met the accused, as days went by a boyfriend and girlfriend relationship developed between the two.
3. However, the victim had broken up with the accused in 2016 after about 4 months in the relationship.
4. On 3rd March, 2017 the accused went to the victim's house at Nawaicoba, Nadi when she was alone at home. The accused told the victim that he only came to talk to her and invited her to seat in his car.
5. As soon as the victim sat in the vehicle, the accused punched her and drove the car so fast that the victim could not escape. Whenever the victim tried to escape by opening the car door, the accused used to pull the door

and punch her. The punches were directed to the victim's face, head, arms, back, stomach and he also slapped the victim many times. The accused told the victim that he will teach her a lesson by killing her then chop her body into pieces, put it in sack and dump it in the ocean.

6. The accused took the victim to his house at Sonaisali, Nadi. He dragged the victim out of the car and took her to the living room. The accused again punched and slapped the victim and with all those beatings she felt weak. The accused then pushed her on the bed in the living room and tied her legs with a cotton material.
7. The accused then removed her clothes and took pictures of her while removing her clothes and when she was naked. The accused then removed his clothes and forcefully put his penis into her mouth without her consent. The victim saw urine dripping from his penis. The accused said she deserved a dirty penis he then forcefully inserted his penis into her vagina without her consent and penetrated her for about 3 to 4 minutes.
8. Every time the victim screamed for help, the accused suffocated her with a cushion and she felt helpless. After this, the accused threatened the victim that he will kill her and her family if she reports him to the police. The victim persuaded the accused that she will not tell anyone and she will not report the matter to police but leave the country. The complainant did not tell her mother straight away because she was frightened of the accused and his threats. On 13th of March, 2017 about 10 days later the complainant told her mother that she had been assaulted and raped by the accused.
9. The matter was subsequently reported to the police and the victim was medically examined.

10. Both counsel filed written sentence submissions for which the court is grateful.
11. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - (a) The accused is 40 years old;
 - (b) He is divorced and has two children. The first child is in New Zealand with his ex-wife. His second child resides in Labasa and the accused supports his child;
 - (c) The accused also supports his father financially;
 - (d) He is a member of the Latter Day Saints Church.
12. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs the State, CAV 0003 of 2014* that the personal circumstances and family background of an accused person has little mitigatory value in cases of sexual nature.
13. The aggravating features are:
 - a) Use of violence

The evidence that unfolded in court showed that the victim was punched on her face, head, arms, back and shoulder until she felt weak and helpless. Her legs were even tied with a cotton material before she was raped. The photographs tendered and medical report of the victim substantiates this.
 - b) Prolonged Violence

The violence on the victim was prolonged from the moment she sat in the car at Nawaicoba, Nadi to the house of the accused at Sonaisali, Nadi and also at his house.

c) Humiliation and Degradation

The accused took pictures of the victim in her undergarments and whilst she was naked without any regard to her right to privacy or her dignity bringing a sense of humiliation and degradation to the victim and then later sending it to her.

d) Threats instilling fear

The accused had made repeated threats to kill her and her family with a view to instilling fear in the victim. Before raping the victim the accused told her he will teach her a lesson by killing her then chopping her body into pieces, putting it in a sack and dumping it in the ocean.

e) Breach of Trust

The accused had asked the victim to get into his car on the pretext of talking to her. The victim trusted the accused so she sat in the car. The accused grossly breached the trust of the victim by his conduct. The accused knew the victim was helpless, vulnerable and alone. He had carefully planned the offending and he was sure of what he was doing. He took the victim to his house which was empty at the time.

f) Emotional and Psychological Impact

The prosecution has served the accused counsel with the Victim Impact Statement. The accused in his mitigation at paragraph 4.1 whilst agreeing that there is trauma inflicted on a rape victim, raises his objection that the victim impact statement was not from a psychiatrist but a counsellor. This court accepts that the victim impact statement was not prepared by a psychiatrist, however, in this court's judgment the noting's by the counsellor was confined to the effects suffered by the victim which cannot be ignored by this court such as post-traumatic stress disorder, sleepless nights,

depression, restlessness, anger, and becoming suicidal. The victim was affected in her studies as well.

The accused has not been able to point out the specific parts of the victim impact statement which the counsellor was not competent to mention in the report.

14. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.
15. In *Mohammed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May 1994*, the Court of Appeal had stated:

“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than the starting point.”

16. 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.”

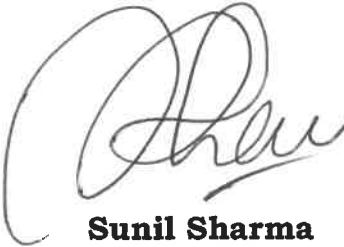
17. I am satisfied that the two offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.
18. It is the duty of the court to protect women from sexual violations of any kind that is the reason why the law makers have imposed life imprisonment for the offence of rape as the maximum penalty.
19. Bearing in mind the objective seriousness of the offences committed I take 8 years imprisonment (lower end of the tariff) as the starting point of the aggregate sentence. I add 5 years for the aggravating factors, bringing an interim total of 13 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I reduce the sentence by 6 months for mitigation. Since the accused has previous convictions he does not receive any discount for good character. The sentence is now 12 years and 6 months imprisonment.
20. I note the accused has been in remand for about 6 months and 14 days. I exercise my discretion to further reduce the sentence for the remand period by 6 months and 15 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served.

21. 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 11 years 11 months and 15 days imprisonment.
22. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences 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 or similar nature.
23. Under section 18 (1) of the Sentencing and Penalties Act, I impose 10 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.
24. Mr. Reddy you have committed a serious crime against a victim who was once your girlfriend and had trusted you. The victim had come all the way from abroad to do business with you. You misrepresented to the victim that you wanted to talk with her inside the car. However, you had other plans. I am sure it will be difficult for the victim to forget what you had done to her. Your actions towards the victim were deplorable and selfish.
25. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. The victim was alone and vulnerable and you took advantage of this. According to the victim impact statement the victim was emotionally and psychologically affected for quite some time after the incident.
26. I am satisfied that the term of 11 years 11 months and 15 days 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.

27. In summary I pass an aggregate sentence of 11 years 11 months and 15 days imprisonment for the two offences of rape that the accused have been convicted of with a non-parole period of 10 years to be served before he 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.
28. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
24 April, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.