

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 51 of 2019

STATE

V

SHALENDRA MANI

Counsel : Ms. S. Naibe for the State.
: Ms. P. Reddy for the Accused.

Dates of Hearing : 22, 23, 26 October, 2020
Closing Speeches : 27 October, 2020
Date of Summing Up : 28 October, 2020
Date of Judgment : 30 October, 2020
Date of Sentence : 26 November 2020

SENTENCE

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

1. In a judgment delivered on 30th October, 2020 this court found the accused guilty and convicted him for the following offences:
 - (a) One count of indecent assault;

- (b) One count of assault causing actual bodily harm; and
- (c) One count of sexual assault.

2. The brief facts were as follows:

The victim was about 11 years in 2012, at that time she was living with the accused (who was her step father), her mother and two brothers at Nasoso, Nadi.

- 3. On 10th November, 2012 the victim's mother had gone to Ba in the night the accused came into her bedroom and started to kiss her and touch her thighs and then ran out of the bedroom. After half an hour the accused came and apologized for what he had done to her and also told the victim not to tell her mother. When the accused had kissed her and touched her thighs the victim was frightened of the accused.
- 4. On 1st March 2019, the victim woke up at 9am and went to have her shower. She was alone since her mother had gone to work and her two brothers were at school. After having her shower the victim did not close the door of the house and went into her bedroom with a towel wrapped around her.
- 5. When the victim was taking out her clothes from the drawer she heard footsteps, as she turned around she saw the accused in her bedroom. He came and grabbed her, covered her mouth and then pushed her on the bed whereby she landed on her stomach.
- 6. The accused forcefully turned the victim over at this time his knuckles hit the mouth of the victim resulting in injuries to her upper lip. The accused covered the mouth of the victim and with the other hand he was able to spread the legs of the victim and then he started licking her vagina. By this

time the victim was on the edge of the bed and the accused was on top of her.

7. As soon as the accused removed his hand from the victim's mouth she shouted and the accused ran away.
8. The matter was reported to the police the accused was arrested, caution interviewed and charged.
9. Both counsel filed sentence, victim impact statement and mitigation submissions for which this court is grateful. The learned counsel for the accused provided the following personal details and mitigation on behalf of the accused:
 - a) He is 38 years of age;
 - b) Separated from his wife;
 - c) Has two children aged 8 and 10 years respectively;
 - d) Was self-employed earning \$100.00 per week;
 - e) Was supporting his elderly mother.
11. 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.

AGGRAVATING FACTORS

The following aggravating factors are obvious:

a) Breach of Trust

The accused is the stepfather of the victim. The victim was in her bedroom when the accused went into her bedroom and committed the offences. The victim was living in the same house with the accused where she was supposed to be safe. The accused grossly breached the trust of the victim by his actions.

b) Victim was alone and vulnerable

The victim was alone and vulnerable the accused took advantage of this.

c) Planning

There is some degree of planning by the accused he knew the mother of the victim and her brothers were not at home.

d) Age difference

The victim was about 11 years of age whereas the accused was 28 years of age when the first offence was committed in 2012, the age difference is substantial.

12. The maximum penalty for the offence of indecent assault is 5 years imprisonment, the accepted tariff is from 12 months to 4 years imprisonment (see *Rokota vs. The State*, HAA 0068 of 2002 (23 August, 2002).
13. The penalty for the offence of assault causing actual bodily harm is 5 years imprisonment. The accepted tariff is from a suspended sentence where there is a degree of provocation and no weapon used to 18 months imprisonment for domestic violence cases or more serious cases of assault (*State vs. Tugalala* [2008] FJHC 78, *Amasai Korovata vs. The State*, [2006] HAA 115 of 2006).

14. The maximum penalty for the offence of sexual assault is 10 years imprisonment the tariff is a sentence between 2 years to 8 years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks (see *State vs. Laca, HAC 252 of 2011 (14 November, 2012)*).

15. 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.”

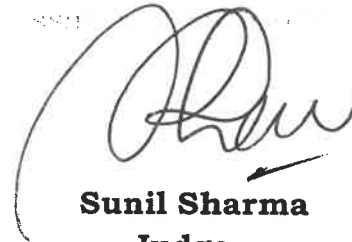
16. I am satisfied that the three offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for all the three offences.

17. Bearing in mind the objective seriousness of the offences committed I take 3 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 3 ½ years for the aggravating factors bringing the interim total to 6 ½ years imprisonment. The personal circumstances and family background of the accused has little mitigating value in cases of sexual nature. The accused has three previous convictions out of which two are for the offence of assault the most recent one in 2016.

18. In view of the above, the accused does not receive any discount for good character. For mitigation the sentence is reduced by 1 ½ years. The aggregate interim sentence now stands at 5 years imprisonment.
19. I note from the court file that the accused has been remanded for 1 year 8 months and 22 days in accordance with section 24 of the Sentencing and Penalties Act I further reduce the sentence as a period of sentence already served.
20. The final aggregate sentence of imprisonment is now 3 years 3 months and 8 days.
21. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was the step daughter of the accused 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.
22. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 2 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.
23. Mr. Mani you have committed serious offences against the victim who was your step daughter. I am sure it will be difficult for her to forget what you had done to her. You have not only brought shame to yourself, but also to your family, for your personal gratification you had no regard for the victim.
24. I am satisfied that the term of 3 years 3 months and 8 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.

25. In summary, I pass an aggregate sentence of 3 years 3 months and 8 days imprisonment for one count of sexual assault, one count of indecent assault and one count of assault causing actual bodily harm with a non-parole period of 2 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.


Sunil Sharma
Judge



At Lautoka
26 November, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.