

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 33 of 2017

STATE

V

PRASHANT RAJU

Counsel : Ms. P. Lata for the State.
: Mr. S. Nand for the Accused.

Dates of Hearing : 18, 19 and 20 May 2020
Closing Speeches : 21 May, 2020
Date of Summing Up : 21 May, 2020
Date of Judgment : 25 May, 2020
Date of Sentence : 08 June, 2020

SENTENCE

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

1. In a judgment delivered on 25 May, 2020 this court found the accused guilty and convicted him for two counts of sexual assault [counts one and two] and one count of rape [count three] as per the following information:

COUNT ONE

[REPRESENTATIVE COUNT]

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

PRASHANT RAJU, between the 1st January, 2015 and the 31st of December, 2015 at Nadi in the Western Division, unlawfully and indecently assaulted “PW” a 9 year old girl, by licking her vagina and sucking her breasts.

COUNT TWO

[REPRESENTATIVE COUNT]

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

PRASHANT RAJU, between the 1st January, 2016 and the 30th of November, 2016 at Nadi in the Western Division, unlawfully and indecently assaulted “PW” a 9 year old girl, by licking her vagina and sucking her breasts.

COUNT THREE

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

PRASHANT RAJU, between the 1st January, 2016 and the 30th of November, 2016 at Nadi in the Western Division, had carnal knowledge with “PW”, a 10 year old girl.

2. The brief facts were as follows:

In the year 2015 the victim was 9 years of age, she lived with her parents and other siblings at Solovi, Nadi. The accused is her father, from the middle of November 2015 to November 2016 the accused would come into the victim’s bedroom, after removing her clothes he would lick her vagina and suck her breasts for about 4 to 5 minutes.

3. The victim also recalled that during Diwali time in 2016 the accused came into her room removed his clothes and also her clothes and then started licking her vagina and sucking her breasts. The accused then went on top of the victim and had sexual intercourse by penetrating her vagina with his penis for about two to three minutes. According to the victim this act of sexual intercourse happened once only, however, the accused had licked the victim's vagina and sucked her breasts on four different occasions. The accused did these to the victim when her mother and other siblings were not at home.
4. The victim did not tell anyone about what the accused had done to her since she was threatened by the accused on all occasions that if she told anyone or her mother he will kill or hurt her.
5. In late 2016 the complainant, her mother and her siblings left their family home at Solovi and went to stay at the Loloma Home. At the Loloma Home the victim met Adi Laite to whom she told what her father had done. The matter was then reported to the police.
6. Both counsel filed their sentence submissions including the victim impact statement and mitigation for which this court is grateful.
7. The following personal details and mitigation have been submitted by the counsel for the accused:
 - a) The accused is a First offender;
 - b) 40 years of age;
 - c) Father of 4 children;
 - d) Sole bread winner of the family;
 - e) All his children are in primary school;
 - f) Wife is sickly and is not working.

8. 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

9. The aggravating factors are:

(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 between a father and a daughter. 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 alone at home, naive, innocent and vulnerable and he continued with his unlawful conduct.

(c) Age Difference

The victim was 9 years of age whereas the accused was 37 years of age. The age difference was substantial.

(d) Exposing a child to sexual abuse

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

(e) Victim Impact Statement

In the victim impact statement the victim stated that her life changed after what her father had done to her. When she thinks of the incidents she gets emotional. The victim experienced loss of concentration at school, loss of trust in people and has become short tempered due to the effects of the incidents. The victim has isolated herself from everyone due to stress and pressure and on one occasion she had become suicidal.

10. 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.
11. There has been an increase in sexual offences involving offenders who are known to the victim and are mature adults. It is shocking to note the manner in which the accused had committed these offences on the victim.
12. 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. A long term imprisonment becomes inevitable in such situations.

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 COUNTS

16. Although the accused is charged with two representative counts of sexual assault the evidence was that there was more than one incident of sexual assault under each count.

17. This accused cannot be punished for all the other occasions of sexual assault but for one occasion only in respect of each count (*see Senilokula v State, Criminal Petition no. CAV 0017 of 2017 (26 April, 2018)*).
18. The two counts of sexual assault and one count of rape for which this accused has been convicted are offences founded on the same facts and are of similar character, I therefore prefer to impose an aggregate sentence for the three offences in accordance with section 17 of the Sentencing and Penalties Act.
19. After assessing the objective seriousness of the offences committed I take 13 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 6 years for the aggravating factors, bringing an interim total of 19 years imprisonment. 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. For mitigation and good character the sentence is reduced by 1 year. The aggregate sentence is now 18 years imprisonment.
20. I note from the court file that the accused was remanded for 1 month and 9 days, in accordance with section 24 of the Sentencing and Penalties Act and in exercise of my discretion the sentence is reduced by 1 month and 15 days as a period of imprisonment already served. The final sentence is 17 years 10 months and 15 days imprisonment.
21. Mr. Raju you have committed serious offences against your daughter who you were supposed to protect and care. The victim was unsuspecting and vulnerable you cannot be forgiven for what you have done to the victim.
22. The victim has also been psychologically and emotionally affected 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

measured or repaired by anyone. You have scarred the life of your own daughter forever. There is no doubt that a positive and a happy childhood memories contribute towards child development which is an inspiration for the future. Unfortunately, this is not so for the victim.

23. As a result of your actions the victim is separated from her mother and other siblings. The incidents had an impact on this child she had informed the court that she felt very bad about what her father was doing to her and also she could not concentrate in her studies. The ripple effect of your actions on the victim has been immense and was obvious during the trial.
24. 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 accused's daughter aged 9 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.
25. 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.
26. Considering the above, I impose 16 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.

27. In summary, I pass an aggregate sentence of 17 years 10 months and 15 days imprisonment with a non-parole period of 16 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.
28. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

08 June, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs. Fazilat Shah Legal, Lautoka for the Accused.