

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 06 of 2016

STATE

V

AMITESH VIKASH CHAND

Counsel : Ms. R. Uce and Ms. S. Naibe for the State.
: Mr. I. Khan and Mr. T. Kaloulasulasu for the
Accused.

Dates of Hearing : 06, 07, 10 August, 2020
Closing Speeches : 11 August, 2020
Date of Summing Up : 11 August, 2020
Date of Judgment : 13 August, 2020
Date of Sentence : 27 August, 2020

SENTENCE

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

1. In a judgment delivered on 13 August, 2020 this court found the accused guilty and convicted him for one count of rape, one count of sexual assault and one count of indecent assault as charged.

2. The brief facts were as follows:

On 7th December, 2015 the victim was at work at the Fiji Revenue and Customs Authority, Sigatoka Branch with the accused and two other officers Shelly and Neli.

3. At around 9am, Shelly and Neli left the office to do banking leaving the victim and the accused in the office. After the tax payers left the accused grabbed the victim's hand and pulled her inside the office from the main door where the victim was standing.

4. The accused held the victim tightly, started kissing her neck, came in front kissed her lips and chest as well. The victim tried to push the accused but she could not. Thereafter the accused lifted the victim's top and bra, sucked her breast and made a love bite on her stomach.

5. While the accused was doing all this, the victim kept on telling the accused to stop and that she will report the matter to the police. The accused did not stop, he lifted the skirt of the victim and from on top of her tights and panty forcefully penetrated the vagina of the victim with his fingers. The victim felt the accused fingers in her vagina she tried to push the accused away and remove his hand but she could not. When she started to cry the accused left her, the victim did not consent to what the accused had done to her.

6. The victim was crying when Shelly and Neli came into the office, the victim relayed to Shelly what the accused had done to her. The matter was reported to the police the accused was arrested, caution interviewed and charged.

7. Both counsel filed sentence and mitigation submissions including the victim impact statement for which this court is grateful.

8. The learned counsel for the accused provided the following personal details and mitigation on behalf of the accused:
- a) The accused is 37 years of age now;
 - b) He is single and lives with his elderly parents;
 - c) He regrets his actions and now realizes that his actions were unwarranted and unnecessary in the circumstances;
 - d) Seeks leniency of the court and he promises to lead a crime free life from now onwards;
 - e) He has learnt his lesson, he did not mean to hurt the victim;
 - f) Cooperated with the police during investigations;
 - g) A person of good character (3 character references attached).
9. 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

10. The following aggravating factors are obvious:
- a) Breach of Trust
The victim had just commenced her employment (first week) as an Attaché where the accused was a senior officer. The victim was doing her normal duties when the accused overpowered and sexually abused her. The accused 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 after Shelly and Neli had left the office he was asking the victim when the tax payers would be leaving the office. There was some desperation by the accused to be left alone with the victim, he did what he had planned to do as soon as the tax payers left and the office was empty.

d) Victim Impact Statement

In the victim impact statement the victim states that she has been affected emotionally and psychologically, as a result she lost concentration at work, and was emotionally drained. She has been labeled a “raped girl” which has affected her life.

e) Age difference

The victim was 19 years and the accused was 32 years at the time of the offending. The age difference is substantial.

11. The maximum penalty for the offence of rape is life imprisonment the accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.

12. 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.”

13. 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)*).
14. 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)*).
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 7 years imprisonment (lower end of the tariff) as the starting point of the sentence. I add 5 years for the aggravating factors, bringing an interim total of 12 years imprisonment.
18. Although the personal circumstances and family background of the accused has little mitigatory value, however, I accept his good character has substantive mitigating value. Even though the accused has a previous conviction for disorderly conduct in a police post which is unrelated to the current offences and in view of the character references submitted I consider the accused as a first offender and a person of good character.
19. At this point, I would like to state that the accused does not receive any discount for being remorseful as mentioned by the defence counsel in his mitigation. The accused had pleaded not guilty which was his right but at the same time he had put the victim to relive her ordeal in court and be cross examined (*see Anand Abhay Raj vs. The State (supra)*). Even whilst giving evidence the accused did not express any iota of remorse for what he had done yet in his mitigation the accused counsel is saying the accused is “*very remorseful of his actions*” is not plausible.
20. I also do not accept that the accused is unemployed as stated by the defence counsel in his mitigation which is contrary to what a character witness mentions. The character reference given by one Sachida Anand dated 23rd August, 2020 states that the accused has a shop in Nausori in the following words “*I usually meet him in his shop serving the customers...He is very hard working and was responsible for the opening hours of the shop during night shifts...*”
21. However, considering the good character and the other mitigating factors of the accused I reduce the sentence by 1 year. The sentence is now 11 years imprisonment.

22. I note the accused has been in remand for about 22 days, in exercise of my discretion I further reduce the sentence for the remand period by 1 month in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final aggregate sentence of imprisonment is 10 years 11 months.
23. 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.
24. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 9 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.
25. The offence of rape not only affects the integrity of a victim, but violates the human dignity, leaving lifelong scars of psychological devastation bringing about a sense of self blame and hopelessness which does not heal easily even long after the physical injuries have healed.
26. Mr. Chand you have committed serious offences against the victim who was your work colleague. 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.
27. I am satisfied that the term of 10 years and 11 months 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.

28. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. The victim had recently joined the work force you were a senior officer and you knew that she was alone and vulnerable. You took full advantage of the situation. According to the victim impact statement the victim continues to be emotionally and psychologically affected by the incidents.
29. In summary, I pass an aggregate sentence of 10 years and 11 months imprisonment for one count of rape, one count of sexual assault and one count of indecent with a non-parole period of 9 years to be served before the accused is eligible for parole.
30. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

27 August, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Iqbal Khan & Associates for the Accused.