

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 130 of 2018

STATE

V

PARMESH CHANDAR

Counsel : Ms. P. Lata for the State.
: Ms. L. Volau for the Accused.

Dates of Hearing : 16, 17, 18, 19 May, 2022

Closing Speeches : 25 May, 2022

Date of Judgment : 30 May, 2022

Date of Sentence : 14 June, 2022

SENTENCE

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

1. In a judgment delivered on 30th May, 2022 this court found the accused guilty and convicted him for one count of indecent assault, one count of sexual assault and two counts of rape as charged.
2. The brief facts were as follows:

The victim and the accused were known to each other. On 25th June, 2018 they met in Nadi Town whereby the victim asked for the accused assistance

in selling her laptop. Shortly after, the accused gave a call to the victim saying that there was an interested buyer at Korovuto. The victim went to Korovuto in the twin cab driven by the accused.

3. After the laptop was sold it was around 4 to 5pm, the accused offered to drop the victim at Nadi Town. However, on the way he told the victim that he has to go to Wailoaloa to pick something. At Wailoaloa, the accused drove the vehicle inside a bush and the first thing he did was lock all the vehicle doors. The victim was sitting in the front passenger seat.
4. After a short while, the accused moved his hand to the victim's seat. At this time, she asked why he was putting his hand towards her. The accused did not respond but moved from his seat to hers.
5. He then lowered the back rest of the victim's seat to almost flat position, went on top held the victim's hands and tied it with the seatbelt. The victim tried to open the door but could not because her hands were tied. At this time, the accused hit the victim on the back and also pinched her thighs.
6. Thereafter, the accused forcefully pulled the victim's skirt and top up then lowered her bra and panty, he then grabbed her breast and started sucking it. At this time the accused put his fingers into the victim's vagina. After fingering the victim's vagina the accused inserted his penis into the victim's vagina and had forceful sexual intercourse.
7. The victim was shocked, upset and scared she could not stop the accused so she started crying. After the accused ejaculated he untied the victim's hands and went back to his seat. The complainant did not consent to what the accused had done to her.

8. The matter was reported to the police the accused was arrested, caution interviewed and charged.
9. The state counsel filed written submissions and victim impact statement whereas the defence counsel filed mitigation for which this court is grateful.
10. The following personal details and mitigation was submitted by the counsel for the accused:
 - a) The accused is 26 years old;
 - b) Is a first offender;
 - c) Married with two young children;
 - d) Self-employed grass cutter;
 - e) Looks after his children and sickly mother;
 - f) Also contributes towards family livelihood since his wife is 6 months pregnant;
 - g) Seeks forgiveness of the court and prays for leniency.
11. 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

12. The following aggravating factors are obvious in this case:

- a) Breach of Trust

The victim and the accused were known to each other. The accused grossly breached the trust of the victim by his actions. The victim had trusted the accused that is why she had agreed to travel with the accused to and from Korovuto.

b) Victim was vulnerable

The victim was vulnerable and unsuspecting the accused took advantage of this and sexually abused the victim. The accused had lied to the victim that he had to go to Wailoaloa to pick something. The accused over powered the victim by tying her hands with the seat belt making the victim helpless.

c) Planning

There is some degree of planning by the accused he drove the vehicle to a secluded area, locked the doors of the vehicle and did what he wanted to do.

d) Victim Impact Statement

In the victim impact statement the victim states that after the incidents she has lost trust in people. After the incident she had attempted suicide. She still has nightmares, flashback and had sleepless nights for two years after the incidents. The incidents led to a broken relationship with her partner.

e) Prevalence of offending

There has been a notable increase in sexual offence cases by individuals known to the victim.

TARIFF

13. The maximum penalty for the offence of rape is life imprisonment and the accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.
14. 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."


15. The maximum penalty for the offence of sexual assault is 10 years imprisonment. The tariff for this offence is from 2 years to 8 years imprisonment depending on the category of offending (*see State vs. Epeli Ratabacaca Laca criminal case no. HAC 252 of 2011 (14 November, 2012)*).
16. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment.
17. Section 17 of the Sentencing and Penalties Act states:

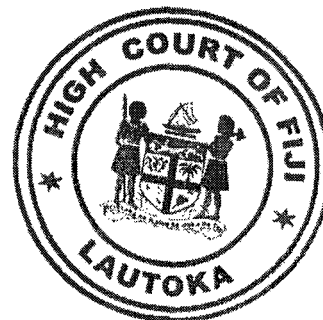
"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."
18. I am satisfied that the four 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 four offences.

19. Bearing in mind the objective seriousness of the offences committed I take 7 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors, and reduced for mitigation and good character since the accused is a first offender he comes to court as a person of good character. The personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation are substantive factors.
20. I note the accused has been in remand for about 14 days, in exercise of my discretion the sentence is further reduced by 1 month 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 two counts of rape, one count of sexual assault and one count of indecent assault is 8 years and 11 months imprisonment.
22. I am satisfied that the term of 8 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.
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 7 years and 11 months 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. Mr. Chandar you have committed serious offences against the victim who was known to you. She had trusted you and at your request did not hesitate to travel with you. I am sure it will be difficult for her to forget what you had done. Your actions towards the victim were self-centered. Due to your lust you did not care about the victim's repeated pleas to stop what you were doing to her. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. According to the victim impact statement the victim is emotionally and psychologically affected by the incidents.
26. In summary, I pass an aggregate sentence of 8 years and 11 months imprisonment for two counts of rape, one count of sexual assault and one count of indecent assault that the accused has been convicted of with a non-parole period of 7 years and 11 months to be served before he is eligible for parole.
27. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

14 June, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.