

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 134 of 2019

STATE

V

SETOKI BARI

Counsel : Mr. U. Lal for the State.
: Ms. A. Bilivalu and Ms. S. Singh for the
Accused.

Dates of Hearing : 14, 15, 16, 17 March, 2023
Closing Speeches : 21 March, 2023
Date of Judgment : 22 March, 2023
Date of Sentence : 06 April, 2023

SENTENCE

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

1. In a judgment delivered on 22nd March, 2023 this court found the accused guilty and convicted him for one count of rape as charged.
2. The brief facts were as follows:

3. In the year 2019 the victim and the accused were in a defacto relationship. On 25th July, 2019 the victim was alone at her home, after having her shower she was lying on the mattress facing downwards. The accused came into the house and set on the settee beside the mattress.
4. During the conversation the victim made it known to the accused that she will not be having a relationship with him. The accused wanted to have sex so he went and lay on top of the victim. The victim did not like this so she started struggling in an effort to stand up and to make the accused fall off her back.
5. During the struggle the towel of the victim fell off at this time the accused with his left hand forcefully removed the victim's panty and after removing his clothes he forcefully penetrated the victim's anus with his penis. The victim did not consent to what the accused had done.
6. The matter was reported to the police and the victim was medically examined. During police investigation the accused was arrested, caution interviewed and charged.
7. The state counsel filed sentence submissions and victim impact statement whereas the defence counsel filed mitigation for which this court is grateful.
8. The following personal details and mitigation was submitted by the counsel for the accused:
 - a) The accused is 36 years old;
 - b) Is a first offender;
 - c) Separated from his wife and has three children;
 - d) Unemployed;
 - e) Cooperated with police during investigations;
 - f) Promises not to reoffend.

9. 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

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

a) Breach of Trust

The victim and the accused were in a defacto relationship at the time. The accused breached the trust of the victim by his actions.

b) Victim was vulnerable

The victim was vulnerable, helpless, and unsuspecting the accused took advantage of this and sexually abused her.

c) Victim Impact Statement

In the victim impact statement the victim states that after the incident she has become fearful of the accused and she feels threatened and ashamed of herself.

d) Planning

There some degree of planning involved. The accused knew the victim was alone that is why he boldly walked into the house and did what he had planned to do.

e) Prevalence of offending

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

f) Safety of the victim

The victim was supposed to be safe at her home but this was not to be due to the actions of the accused.

TARIFF

11. 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.

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. Bearing in mind the objective seriousness of the offence committed I take 7 years imprisonment (lower range of the scale) as the starting point of the sentence. The sentence is increased for the aggravating factors, and reduced for mitigation and good character. The personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive value.
14. I note the accused has been in remand for about 1 year and 24 days the sentence is further reduced in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 7 years 6 months and 6 days imprisonment.
15. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence 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.
16. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 7 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.
17. Mr. Bari you have committed a serious offence against the victim. She was your defacto partner and she trusted you. I am sure it will be difficult for the victim to forget what you had done to her. Due to your lust you did not care about the victim and her safety. 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 incident.

18. In summary, I pass a sentence of 7 years, 6 months and 6 days imprisonment for one count of rape the accused has been convicted of with a non-parole period of 7 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.
19. 30 days to appeal to the Court of Appeal.

**Sunil Sharma
Judge**

At Lautoka

06 April, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.