

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 38 of 2021

STATE

V

ISAIA NEIQOVU

Counsel : Ms. S. Swastika and Ms. S. Prakash for the
State.
: Ms. B. Mohammed for the Accused.

Dates of Hearing : 13, 15, and 16 June, 2023
Closing Speeches : 19 June, 2023
Date of Judgment : 20 June, 2023
Date of Sentence : 28 June, 2023

SENTENCE

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

1. In a judgment delivered on 20th June, 2023 this court found the accused guilty of one count of rape and convicted him accordingly.
2. The brief facts were as follows:

- a. The victim and the accused were work colleagues. On 6th February, 2021 the employer had organized a team bonding exercise in one of the resorts in Sigatoka. After the short formal function the party began and the victim drank excess alcohol.
- b. She was so drunk that she vomited and passed out while chatting with a colleague. She was taken to her room where she again vomited and was in a state of unconsciousness before she was put on the bed. As the party progressed into the night the accused sneaked into the room of the victim. He was on top of the victim when he was disturbed by Ronil, the accused realized his wrong doing said he was sorry for what he had done. Ronil chased the accused out of the room and warned him not to come into the room again. The room did not have a lock so Ronil was not able to lock the door.
- c. During the early hours of the morning (7th) the accused once again sneaked into the room of the victim he went on top of the victim pulled her leggings, pants and panty to her knees removed his pants and started having sexual intercourse with her. The victim did not have the capacity to consent and had not consented to have sex with the accused.
- d. Whilst in the process of having sexual intercourse Ronil entered the room and saw the accused on top of the victim having sex. The accused hurriedly got off the victim wore his pants and again said sorry to Ronil before leaving the room.
- e. The matter was reported to the police the accused was arrested, caution interviewed and charged.

3. The state counsel filed written sentence submissions with the victim impact statement and the defence counsel filed mitigation for which this court is grateful.
4. The following personal details and mitigation was submitted by the counsel for the accused:
 - a) The accused is 26 years old;
 - b) First offender;
 - c) Is married and has 2 children;
 - d) Is a Farmer;
 - e) Was earning \$80.00 net per week;
 - f) Sole bread winner of the family.
5. 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

6. The following aggravating factors are obvious in this case:
 - a) Breach of Trust

The victim and the accused were work colleagues. She trusted the accused that is why she had danced with him during the party. The accused grossly breached the trust of the victim by his actions.

b) Victim was vulnerable

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

c) Planning

There is some degree of planning by the accused he knew the victim was alone and knocked out while the others were enjoying the party he sneaked into the victim's room and sexually abused her.

d) Prevalence of the offending

There has been an increase in sexual offence cases on vulnerable victims by people known to the victim. The accused was bold and undeterred in what he did to the victim.

e) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

- a) Hardly trusts people;
- b) Does not socialize with anyone;
- c) Was reluctant to go back to work;
- d) Feels insecure wherever she goes.

f) Victim in her room

The victim was supposed to be safe in her room but this was not to be due to the actions of the accused,

TARIFF

7. 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.

8. 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.”

9. 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 accused is a first offender who 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 has substantive mitigating value for which his sentence is reduced.

10. I also note the accused has been in remand for about 5 months and 9 days, in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 9 years and 21 days imprisonment.
11. 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.
12. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 8 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.
13. Mr. Neiqovu you have committed a serious offence against the victim. She trusted you as a colleague 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 consequences of your actions on the victim who was sleeping in her room. This court will be failing in its duty if a long term deterrent custodial sentence is not imposed. According to the victim impact statement the victim is emotionally and psychologically affected by the incident.

14. In summary, I pass a sentence of 9 years and 21 days imprisonment for one count of rape that the accused has been convicted of with a non-parole period of 8 years to be served before he is eligible for parole.
15. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka
30 June, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.