

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO HAC 159 OF 2019

STATE

v

ISAAC LAL

Counsel: Mr L. Baleilevuka for Prosecution
Mr J. Niudamu for Defence

Date of Judgment: 19 October 2023

Date of Sentence Hearing: 05 December 2023

Date of Sentence: 8 December 2023

SENTENCE

1. Mr. Isaac Lal, you stand convicted after trial of one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009.

2. At the time of the offence, you were an Information Officer at the Ministry of Information and the head of the western department based in Nadi. The mother of the victim was known to you as you were a customer of her canteen. You were acquainted with the victim from her schooldays as she used to visit your office to get her documents photocopied. You indicated to the victim's mother that there is a vacancy at your office for the position of Journalist and encouraged the victim to apply for that vacancy. On the day of the incident, the victim was on job hunt and went for number of job interviews and ended up in your office to do some documents.
3. While you were photocopying her documents you passed some prurient comments of sexual nature that *her breasts had grown bigger*; *'you look sexy'*; *'when the European guy climbed on you, how it felt'*? *'When I put my tongue, you will forget that European'*. When she came closer to you to give the certificates, you touched her breast on top her blouse under the guise of brushing off a fiber on it and started kissing her. When she tried to back you off, you reached out on her breast to give her a mark on the breasts. When she was bending over to grab the file that fell on the floor, you took advantage. After pulling off her pants, you penetrated her vagina two times with your penis. She was shocked at what was happening. You did it without her consent. She slapped you and rushed to the police station where she lodged a complaint soon after the incident. She was medically examined and the examining doctor made some observations that are consistent with a forceful sexual intercourse.
4. The maximum sentence for Rape is life imprisonment. The sentencing tariff for adult rape ranges from 7 years to 15 years' imprisonment (Rokolaba v State [2018] FJSC 12 (26 April 2018)). The starting point in an adult rape case is at least seven years' imprisonment. However, there are cases where the proper sentence may be substantially higher or substantially lower than that starting point, depending on the particular circumstances of the case [Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994) (State v Marawa [2004] FJHC 338)].

5. In selecting a sentence that fits your offence, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to the maximum penalty prescribed for the offence, the current sentencing practice and the applicable sentencing guidelines issued by the courts. Having considered the seriousness of the offence and the harm caused to the victim, I would select the appropriate starting point. The final sentence will be determined after making due adjustments for the aggravating and the mitigating circumstances.
6. Sexual offences are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive condign punishment to mark the society's outrage and to denounce sexual abuse in our society.
7. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 7 years from the bottom range of the tariff for adult Rape.
8. I identify the following aggravating and mitigation factors with the help of the submissions filed by the Counsel and the guidelines set out in Ram v State [2015] FJHC 26 (23 October 2015):

Aggravating factors:

- (a). The offence was committed in a government office of which you were the boss. You held a position of authority over the victim because she had visited your office to apply for a job. You not only abused your authority but violated the trust as a government servant. You also breached the trust placed on you by the victim's mother.
- (b). The offence was committed in a government office, during official working hours. The nature of the offence has the potential to tarnish the reputation

of the public service and the confidence in the government and its institutions.

- (c). There is evidence of pre-planning in the offending. In the first visit of the victim to your office, you acted like a sincere confidante, and encouraged her to visit you again to complete her intended work. You planned to satisfy your lustful demands on her second visit by ensuring that no one else was present in the office.
- (d). By making prurient comments, you sexually abused her, albeit verbally.

Mitigating Factors:

- (a). You are young and 35 years of age. You are married with children and looking after the elderly parents.
 - (b). You are a first offender. You have maintained a clear record over the past 35 years. However, you held a position of trust and that trust was violated. Therefore, I do not think that you should be given as substantial allowance for the past clean record.
9. I add 3 years and 6 months to the starting point of 7 years for the above mentioned list of aggravating factors to arrive at an interim sentence of 10 years and 6 months' imprisonment. I reduce 1 year for mitigating factors to arrive at a sentence of 9 years and 6 months' imprisonment.
10. According to the State, you have spent approximately 6 months in remand. I would consider your remand period as part of your sentence already served and deduct 6 months to arrive at a final sentence of 9 years' imprisonment.

11. You are young and a first offender. Taking into consideration your age, potential for rehabilitation and the gravity and the impact of the offence on the society, I impose a non-parole period of 7 years.

12. Summary

Mr. Isaac Lal, you are sentenced to an imprisonment term of Nine (09) years with a non-parole period of Seven (07) Years. You are eligible for parole and remission when you have served seven years in the correction facility.

13. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge

8 December 2023

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

Niudamu Lawyers for Defence