

STATE v STANLEY PRASAD (HAC46 of 2004)

HIGH COURT — CRIMINAL JURISDICTION

5 SHAMEEM J

12 February 2007

10 **Criminal law — sentencing — breach of trust — imposition of sentence — 17 counts of demanding money with menaces — tariff for offences under s 294(1)(c) of the Penal Code — mitigating and aggravating factors taken into account — Penal Code s 294(1)(c).**

15 The Complainant tourist came to Fiji in August 1999. He met the Accused at a funeral and they became friends. The Accused and co-accused agreed to establish a relationship of trust with the Complainant to obtain money from him. The Accused arranged for the Complainant to have sexual intercourse with local prostitutes. When the Complainant returned to Australia, they telephoned and informed him that the girls he had sexual intercourse with were underage and that they had photographs of the sexual intercourse. They threatened to report the Complainant to the police if he did not pay money. The Complainant was able to pay the Accused and co-accused the total sum of \$194,350. 20 During the investigation, the Accused pleaded guilty to 17 counts of demanding money with menaces contrary to s 294(1)(c) of the Penal Code.

Held — (1) The tariff for offences under s 294(1)(c) was not known. However, the court treated the present case as one of a breach of trust.

25 (2) In fixing the sentence, the court took into account the mitigating and aggravating factors present in the case. The mitigating circumstances were the Accused's guilty plea, remorse, willingness to give evidence for the prosecution in the trial against the co-accused and the considerable delay in the investigation, prosecution and trial of the case. The aggravating circumstances were the large sums of money extracted from a frightened and credulous complainant, the gross breach of trust, and the non-recovery of 30 the total sum of \$194,350. The case caused great damage to the tourism industry, and to the image of the people portrayed overseas. The Accused should concurrently serve a sentence of imprisonment on each count.

Sentence of 2 years' imprisonment imposed.

No cases referred to.

35 *D. Goundar* for the State

T. Fa for the Accused

Shameem J. Stanley Prasad, you have pleaded guilty to 17 counts of demanding money with menaces contrary to s 294(1)(c) of the Penal Code.

40 The facts which you have agreed to are that the complainant, one George Roderick Rickert, a farmer and an Australian citizen, came to Fiji in August 1999. You met him at a funeral, and you became friends. You, with another (who still awaits trial on the same charges) agreed that you would obtain money from the complainant, and would first establish a relationship of trust. You met with the complainant and on occasion it was arranged by your co-accused that local 45 prostitutes would have sexual intercourse with the complainant.

The complainant then returned to Australia. You, and your co-accused then telephoned the complainant telling him that the girls with whom he had sexual intercourse, were underage and that he would be reported to the police. You told him that there were photographs taken of the complainant having sexual 50 intercourse and that if he did not pay you money, you would report him to the police.

The complainant then sent money into the bank account of your co-accused in the amounts specified in each charge, to the total by 4 August 2001, of \$194,350.

The complainant parted with his money because he had never been in trouble with the law, and he was afraid of prosecution. In fact, the girls with whom he had had sexual intercourse were not underage and there were no photographs.

From each payment, you received on \$100–200. On investigation you admitted your role in these offences. You were charged on 15 June 2004.

You have a number of previous convictions, and I disregard those before 1998. The remaining convictions are for minor offences such as touting.

In mitigation, your counsel has said that you are 41 years old, that you have a 20-year-old handicapped son, that you are a tourist guide by profession and that yours was not the principal role in these offences.

There is no known tariff for offences under s 294 of the Penal Code, and I consider that I should treat this case as one of a breach of trust.

Breach of trust cases have a sentencing tariff of 18 months–3 years' imprisonment. The starting point depends on the size of the fraud.

In this case, I commence at 2 years' imprisonment. In your favour is the mitigation outlined by your counsel, your guilty plea, your remorse, your willingness to give evidence for the prosecution in the trial against your co-accused and the considerable delay in the investigation, prosecution and trial of this matter. You were not charged until June 2004, almost 5 years after the date of the first offence in 1999, and 3 years after the date on the last count. After charges were laid, there was a delay of almost 3 years. For all of this time, this case has been hanging over your head.

The aggravating factors, are the large sums of money extracted from a frightened and credulous tourist, the gross breach of trust, and the non-recovery of the total sum of \$194,350. Such cases do great damage to our tourism industry, and to the image of our people portrayed overseas.

Taking all these matters into account, I sentence you to 2 years' imprisonment on each count to be served concurrently.

Sentence of 2 years' imprisonment imposed.

35

40

45

50