

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 87 OF 2016

STATE

v

SAIYAD KHAN

Counsel : Ms D.S. Alagendra with Ms S. Navia for State  
: Mr. J. Singh for Accused

Date of Judgment : 16 November 2018

Date of Sentence : 3 December 2018

(Name of the Victim is suppressed. She is referred to as NN)

SENTENCE

1. Mr. **Saiyad Khan**, after a full defended trial you stand convicted of one count of Rape. The information on which you were reads as follows:

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**SAIYAD KHAN** on an unidentifiable date between the 1<sup>st</sup> day of December 2014 and the 31<sup>st</sup> day of March 2015 at Sigatoka in the Western Division inserted his penis into the vagina of NN, a child under 13 years.

2. The assessors unanimously found you guilty of Rape as charged. The Court accepted the opinion of assessors and you were convicted accordingly. You now come before this Court for sentence.
3. You are 32 years of age and the cousin of the victim. Victim was 12 years old when you raped her. Victim's mother had sent the victim to your house to get her mobile phone charged. You played a movie and made her watch the television. When she stepped out of your house after the movie, you grabbed the victim from her back, took her to your room and forcefully pushed her on your bed. Victim was crying out for help but no one could hear her because you were covering her mouth. You took off her *sarwal* trousers and forcefully put your penis into her vagina and had sexual intercourse with her. It was a painful experience for her because it was her first time having sex with a man. She was bleeding from her vagina. You made her pregnant. You threatened her not to tell the incident to anyone in her family and warned her that if she did you would slap her.
4. The maximum penalty for Rape is life imprisonment.
5. Tariff for juvenile rape is 11-20 years' imprisonment. In *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018) Gates CJ held: "*The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms*"

6. In sentencing offenders, the Courts must have regard to the Constitution of Republic of Fiji and the proportionality principle in sentencing enshrined in it. Section 4 of the Sentencing and Penalties Act 2009 requires the courts to have regard to the maximum penalty prescribed for the offence, current sentencing practice and applicable guidelines issued by the courts.
  
7. The courts of the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is one of the most serious forms of sexual violence and that rapists will be dealt with severely. The courts have underscored that children are vulnerable members of our society. They are entitled to live their lives free from any form of physical or emotional abuse. They are entitled to trust their family member to protect them and keep them safe from sexual violence. When family members sexually abuse children, they should expect condign punishment to mark the society's outrage and denunciation against sexual abuse of children. Rape and sexual abuse of children have far-reaching consequences for not only the child victims themselves but also their families and society. The courts have emphasized that the increasing prevalence of such offending in the community calls for deterrent sentences.
  
8. By prescribing life imprisonment for Rape, the law makers expect the courts to impose harsher punishment on rape offenders. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.
  
9. The main purposes of your sentence are deterrence and denunciation. Lord Denning once said: *"the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of the citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive or nothing else ... The ultimate justification of any punishment is not that it is deterrent, but that it is the emphatic denunciation by the community of crime...."*
  
10. The courts are required to consider the seriousness of the offending and the impact or harm caused to the victim in selecting the starting point of the sentence. Your offending is very serious. You used force and violence to silence

the victim. The victim suffered physically and emotionally. Having considered the seriousness of the offence and the harm caused to the young victim, I pick 12 years' imprisonment as the starting point.

### **Aggravating Circumstances**

11. I considered the following aggravating circumstances to increase your sentence:

**(a) The victim was vulnerable**

The victim was a child of 12 years of age when you raped her. She was vulnerable by reason of her age and other circumstances of the case. Her father and uncles prevented her from reporting the rape to save the family reputation. Victim was angry with her mother because her mother refused to take her to the police station due to pressure from her father's side to which you belong. You exploited her vulnerability.

**(b) Breach of trust**

The victim was your younger cousin. She was also your neighbor. She knew you from the time she was a little child. You were in a position of trust and had a duty to protect her. You have miserably failed to honour that trust.

**(c) The impact of the crime on the victim**

The impact of the crime on the victim was extremely traumatic and it is continuing. The impact of the crime on the victim is evident from the testimony of the victim, her mother and also from the Victim Impact Report. The acts committed by you had caused the child victim pain and injury. She was bleeding from her vagina. She had to leave school because she could not concentrate on studies. Her school education came to an abrupt end. She started running away from the house and was not listening to her mother. She became abusive in her behavior and started consuming alcohol, mixing with wrong company.

**(d) The victim had to relocate herself**

Victim did not want to see you anymore after the incident. Refusing to stay home because you were living in close proximity, she had to relocate herself at her aunt's place.

**(e) The victim became pregnant**

Victim became pregnant when she was only 12 years old. When this was discovered by her aunt and her parents, she was taken to a doctor who then terminated the pregnancy.

**(f) The victim was exposed to sexual activity at such a tender age.**

**(g) The victim lost her virginity**

You took away victim's virginity. It was the first time she was having sex and she started to bleed from her vagina after the rape.

**(h) The disparity in the age**

There was an age difference of 17 years between you and the victim.

**(i) The victim was threatened with violence**

You threatened to slap the victim if she told anyone and told her that if anything happened she must not blame you. She was afraid to tell her parents about the rape because you had warned her not to tell anyone.

**(j) The victim was prevented from reporting the crime and the interference was continued even through the trial**

You threatened to slap the victim if she told anyone and told her that if anything happened she must not blame you. You and your family members had taken every effort to prevent the matter being reported to police. They had tried to influence the witnesses for the Prosecution in various forms even after the trial had commenced.

**(k) The consequences for the family unit**

By your act, you have destroyed the family unit where the victim's relationship with her father had been severely affected as a result of the incident and matters related to the incident. In view of the Court of Appeal of England and Wales decision in Tiffany, Attorney-General's Reference No. 52 of 2009 [2009] EWCA Crim 2125 (2 October 2009) I considered as an aggravating factor the profound effect that the offending had on an already emotionally damaged and extremely vulnerable child, together with the consequences for the family unit.

**12. Mitigating Circumstances**

I considered the mitigating circumstances your Counsel has submitted to this court. The mitigating factors submitted are of very little mitigating value.

- (a). You are 32 year old young person. You are not married and currently employed as a panel beater earning \$ 100 a week. You are the sole breadwinner of your family looking after your widowed mother who is suffering from a kidney failure.
- (b) You are a first offender. You do not have any previous convictions.

**13. Time Spent in Remand**

You were in remand for 33 days. I have separately considered the remand period in decreasing your sentence.

14. **Sentence**

I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 15 years' imprisonment. I deduct 1 year for mitigating factors and for the remand period of 33 days bringing the sentence to one of 14 years' imprisonment.

15. You are a first and young offender. Acting under Section 18(1) of the Sentencing and Penalties Act, I order that you are eligible for parole after serving an imprisonment term of 10 years.

16. **Summary**

You are sentenced to 14 years imprisonment with a non-parole period of 10 years.

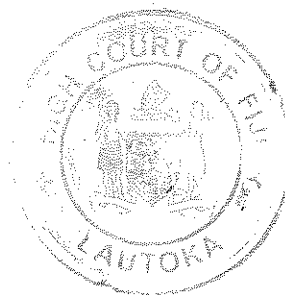
17. 30 days to appeal to the Fiji Court of Appeal.

  
Aruna Aluthge

Judge

At Lautoka

3<sup>rd</sup> December, 2018



**Counsel:**

- Office of the Director of Public Prosecution for State
- Samusamuvodre Sharma Law for Defence