

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 41of 2016

STATE

v

MOHAMMED RASHEED

Counsels: Mrs. A. Vavadakua for the State
Mr. A. Sen for the Accused

Dates of Hearing: 23, 24 and 25 July 2018

Date of Summing Up: 26 July 2018

Date of Judgment: 26 July 2018

Date of Sentence: 27 July 2018

SENTENCE

1. The accused has been convicted after trial in this Court on the following counts:

FIRST COUNT

(REPRESENTATIVE COUNT)

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED RASHEED, between the 1st day of November 2012 and the 31st day of December 2012, in Labasa, in the Northern Division, had carnal knowledge of **A.**, a child under the age of 13 years.

**SECOND COUNT
(REPRESENTATIVE COUNT)**

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED RASHEED, between the 1st day of December 2014 and the 31st day of December 2014, in Labasa, in the Northern Division, had carnal knowledge of **A.**, a child under the age of 13 years.

**THIRD COUNT
(REPRESENTATIVE COUNT)**

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED RASHEED, between the 1st day of January 2015 and the 30th day of April 2015, in Labasa, in the Northern

Division, had carnal knowledge of **A.**, a child under the age of 13 years.

2. The evidence elicited at trial proved that the accused is the Uncle of the victim (who for the purposes of these reasons for sentence is referred to as A.). At the time of the offence the accused was 30 and A. was 12 years old.
3. In December 2013 while they were both observing religious rites for A.'s deceased grandmother (the accused's mother-in-law) the accused woke A. in the night while she was asleep and raped her.
4. Again in December 2014 he again raped her when her parents were away.
5. Finally he raped her in early 2015, again by stealing into her room at night.
6. The child spoke of other incidents of rape but was not able to recall the dates and for this reason the counts are representative counts
7. The girl A. then experienced morning sickness and a hospital attendance confirmed her pregnancy. It was only then that the family members learned of the rapes.
8. Rape of a child under 13 is proved when sexual connection is proved. There is no need to find lack of consent because a child under 13 is unable to consent.

9. Mr. Sen refers to the crime as “statutory rape” which it might well be, that does not alleviate the seriousness of the crime committed against a child.
10. The maximum penalty for rape is life imprisonment and the Supreme Court has held that the sentence for rape of a child under 18 should be a term of imprisonment of between 10 and 16 years (see **Anand Abhay Raj** CaV0003 of 2014).
11. In mitigation, Mr. Sen reminds the Court that the accused is 35 years old, married with two children. He has a clear record . He also stresses that there was no element of violence used in perpetrating these crimes. At one time the accused was a Muslim priest serving in Labasa before he moved to an isolated farm. Mr. Sen prays that having acted in such a high religious position, he would have provided services to the Muslim community which should be taken into account in his favour.
12. State Counsel submits that the aggravating features in this case is the gross breach of trust between uncle and niece with an age difference of 18 years. She also reminds the Court that the crimes made the child pregnant for which she had to leave school, ruining her future.
13. I take as a starting point a term of 10 years at the bottom end of the tariff band. For the aggravating features referred to in the preceeding paragraph I add 7 years to that starting point. For the very short time the accused spent in custody and for his hitherto clear record I deduct 2 years making a final sentence of imprisonment that the accused will serve a term of 15 years imprisonment. He will serve 12 years of that sentence before he is eligible for parole.

14. I cannot accept Mr. Sen's point that serving as a Muslim priest is a mitigating factor. Such a person is deemed to be righteous and principled and meant to be an example to his community, not having sexual relations with a very young girl making her pregnant.
15. The accused has 30 days to appeal to the Court of Appeal.

P. Madigan

P.K. Madigan
Judge



At Labasa
27 July 2018