

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 125 of 2017

STATE

V

ATAMU PENETE

Counsel : Mr. A. Singh for the State.
: Ms. V. Narara [LAC] for the Accused.

Dates of Hearing : 13, 16, 18, July, 2018
Closing Speeches : 19 July, 2018
Date of Summing Up : 20 July, 2018
Date of Judgment : 23 July, 2018
Date of Sentence : 13 August, 2018

SENTENCE

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

1. In a judgment delivered on 23 July, 2018 this court found the accused guilty and convicted him for one count of attempted rape and three counts of rape as per the following information:

FIRST COUNT

Statement of Offence

ATTEMPTED RAPE: Contrary to section 208 of the Crimes Act 2009.

Particulars of Offence

ATAMU PENETE on the 22nd day of April, 2017, at Lautoka in the Western Division, attempted to have carnal knowledge of “**NP**” without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence

ATAMU PENETE on the 27th day of April, 2017, at Lautoka in the Western Division, penetrated the vagina of “**NP**” with his penis, without her consent.

THIRD COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence

ATAMU PENETE on the 12th day of May, 2017, at Lautoka in the Western Division, penetrated the vagina of “**NP**” with his penis, without her consent.

FOURTH COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence

ATAMU PENETE on the 20th day of May, 2017, at Lautoka in the Western Division, penetrated the vagina of “**NP**” with his penis, without her consent.

The brief facts were as follows:

2. The victim is the daughter of the accused, in the year 2017 she was 14 years of age a year 9 student.
3. On 22 April, 2017 the complainant was at home with her siblings and her father, the accused. During the day she asked her father if she could go and watch the inter zone meet at Churchill Park. Her father replied that she is to go first in the bedroom with him, she obliged.
4. In the bedroom she was shocked when her father locked the door and told her in an aggressive tone to lie on the bed. When the victim was on the bed her father removed her pants and panty and also tried to kiss her. She pushed him away.
5. After this, she wore her pants and panty and went into the kitchen. The victim got scared when her father did this to her. She did not tell anyone because she was told by her father not to tell anyone about what he had done to her. The complainant's siblings were outside the house at this time.
6. On 27th April in the afternoon the victim was in the kitchen cooking, the accused came and told her that he wanted to have sex with her. She refused, at this time the accused pulled the victim's hand and took her to

his bedroom. In the bedroom he locked the door, told her to lie on the bed, forcefully removed her pants and panty and inserted his penis into her vagina. He covered her eyes with one of her mother's clothes. The sexual intercourse continued for about 5 minutes. When she got up she saw the bed sheet was wet. The victim left the bedroom and had her shower.

7. The victim was frustrated she did not tell anyone about what the accused had done to her. He told her if she told anyone both will go to prison so she did not tell anyone.
8. In respect of the third incident, in the afternoon of 12th May, whilst cooking her father came and punched her on the left shoulder because she had cooked food in a small pot and it was not enough.
9. According to the victim her siblings were watching a movie. After dinner her father came and told her that he wanted to have sexual intercourse with her. The victim refused, upon hearing this, her father pulled her hair and took her into his bedroom. She was crying at this time.
10. Inside the bedroom her father took off her clothes and told her to lie on the bed and then inserted his penis into her vagina for about 10 minutes she was frustrated and fearful of what the accused was doing to her. She did not shout for help because he told her not to shout or tell anybody otherwise both will be in trouble. The victim did not tell anyone because she was afraid her father would do something to her.
11. Finally, on 20th May, at about 5.45am when the victim returned after dropping her mother at the road side so that her mother could go to work the accused was in the sitting room. The complainant went to her

bedroom but there was no mattress so she went to her parent's bedroom and slept there.

12. When she woke up, she was shocked to see her father sleeping beside her. At this time he forcefully removed the victim's pants and panty and inserted his penis into her vagina for about 10 minutes.
13. After what her father had done, the victim wanted to run away from home she was really frustrated and afraid. At this time the victim heard her siblings calling her from outside the bedroom. Her father told her not to respond but to wait inside the room. After removing the louver blades of the bedroom her father jumped out of the window.
14. Her father had gone outside to check if there was any one around. After sometime he came into the bedroom to tell the victim to leave the room. The victim did not tell anyone about what her father had done to her since she was scared. He had told her not to tell anyone and whatever had happened was only to be kept between the two.
15. On 3 June, 2017 the complainant's grandmother Titilia Nasokia who lived close by came and asked the victim why the accused had jumped out of the window. She told her grandmother whatever she had told the court. Upon hearing his, her grandmother informed the complainant's mother.
16. On 4th June, the matter was reported to the police by the victim's mother, the victim was medically examined.

17. On all the above occasions the victim did not consent to the unlawful sexual activities of the accused. The mother of the victim was not at home when the above offences were committed on the victim.
18. Both counsel have filed written sentence submissions for which the court is grateful.
19. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - (a) The accused is a first offender;
 - (b) He was 44 years of age at the time of the offending;
 - (c) He is married, unemployed and resides with his wife and six children;
 - (d) Was employed as an Engineer with a shipping company;
 - (c) He is an asthmatic.
20. 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.
21. The aggravating features are:
 - (a) Breach of Trust
The victim is the daughter of the accused. The accused grossly breached the trust of his own daughter by his actions. The accused abused the sanctity of the relationship between a father and daughter.

(b) Planning

The accused had planned to do what he did when his wife was not at home but at work. The accused knew the victim was innocent and vulnerable at the time of the offending yet he continued with his unlawful conduct.

(c) Age Difference

The victim was 14 years whereas the accused was 44 years of age. The age difference was substantial.

22. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in the decision of *Anand Abhay Raj* (supra) has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.
23. It is the duty of the court to protect children from sexual exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.
24. There has been an increase in sexual offences involving offenders who are known to the victim and matured adults. It is disgusting to note the manner in which the accused had breached the trust of this victim.
25. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if

the court had imposed a separate term of imprisonment for each of them.”

26. I am satisfied that the four offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the four offences.
27. After assessing the objective seriousness of the offences committed I take 12 years imprisonment as the starting point of the aggregate sentence. I add 5 years for the aggravating factors, bringing an interim total of 17 years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value I find his good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
28. I note from court file that the accused was remanded for 1 year 2 months and 6 days. In exercise of my discretion I deduct 1 year 2 months and 15 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 13 years 9 months and 15 days imprisonment.
29. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the head sentence of imprisonment for the counts of attempted rape and rape is 13 years 9 months and 15 days.
30. Mr. Penete you have committed serious offences against your own daughter you were supposed to protect, care and love. You are a disgrace to the society, worse than animal even animals protect their own. The victim was unsuspecting and vulnerable you had instilled fear in her by

your conduct. You cannot be forgiven for what you had done to this child. You have not only scarred the victim's life forever but have brought shame to all the fathers and broken the sanctity of the relationship.

31. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on a victim who was his own daughter of 14 years compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
32. Under section 18 (1) of the Sentencing and Penalties Act, I impose 12 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.
33. I am satisfied that the term of 13 years 9 months and 15 days imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.
34. In summary I pass an aggregate sentence of 13 years 9 months and 15 days imprisonment with a non-parole period of 12 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

35. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read 'Sunil Sharma', is written in a cursive style.

Sunil Sharma
Judge

At Lautoka
13 August, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.