

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CRIMINAL CASE NO. HAC 63 OF 2016

BETWEEN : **STATE**

AND : **SAIYAD KHAN**
(Trial in Absentia)

Counsel : **Mr. A. Singh with Mr. Chand for the State**
(Accused absent and unrepresented)

Hearing on : **28th of May 2020 – 29th of May 2020**
Summing up on : **01st of June 2020**
Judgment on : **09th of June 2020**
Sentence on : **07th of July 2020**

SENTENCE

1. Saiyad Khan, you have been found guilty and convicted of a count of Rape.
2. You have pleaded not guilty to the charge and the ensuing trial lasted for 2 days in your absence. The complainant Shayal Shika Kumar, Mr. Sandip Patil who worked for you and a doctor on behalf of the doctor who examined the alleged victim, gave evidence for the prosecution. The assessors unanimously found you guilty and this court having reviewed the evidence, conquered with the opinion of the Assessors, found you guilty and convicted you of the said count.
3. It was proved during the trial that, being the employer of Shayal Shika Kumar how you abused, drugged her and raped her at a hotel in Nadi.
4. You were the employer of the complainant during the alleged period. The complainant came to work under you to earn money for her University studies. Instead of helping her, you drugged her and preyed upon her. It is obvious that you drugged her since she did not consent to have sexual intercourse with you.

5. The trial was taken in your absence as you have left this country violating your bail conditions. I will not consider that in any way in deciding the appropriate term to be imposed on you.
6. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
7. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
8. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

9. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

10. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The

increasing prevalence of such offending in the community calls for deterrent sentences.”

11. It is safely assumed that the tariff set for rape of an adult is 07 to 15 years of imprisonment. [**Lepani Rokolaba v State** [2018] FJSC 12; CAV0011.2017 (26 April 2018)]. In consideration of the objective seriousness, I commence the sentence at 08 years of imprisonment.
12. The aggravating factors are as follows:
 - (i) There was gross abuse and breach of trust.
 - (ii) This is a pre-planned crime.
 - (iii) The impact of the crime on the victim was traumatic.
13. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 3 years. Now your sentence is 11 years of imprisonment.
14. You have not indicated any ground of mitigation. However, I do not have any material to conclude that you have any previous criminal involvements. Therefore I will deduct one year from the above.
15. Accordingly, I sentence you to a term of imprisonment of 10 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 7 years of that sentence.
16. Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”
17. You have been in remand custody for this case from 01st of October 2016 to 18th of October 2018. Accordingly, you have been in custody for a period of about 18 days. The period you were in custody shall be regarded as period of imprisonment already

served by you. I hold that a period of 18 days should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

18. In the result, you are sentenced to a term of imprisonment of 10 years with a non-parole period of 07 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 09 years, 11 months and 12 days.

Non-parole period - 06 years, 11 months and 12 days.

19. The period of imprisonment would commence from the date you will be arrested. The Fiji Police Force, Interpol and the Fiji Immigration Authority to be noticed and international arrest warrant to be issued.

20. You have 30 days to appeal to the Court of Appeal if you desire so.




Chamath S. Morais
JUDGE

At Lautoka
07th July 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Lautoka.
Solicitors for the Accused : Accused absent and unrepresented