

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 304 of 2020

STATE

vs.

- 1. FAIZAL MOHAMMED**
- 2. SHAHANA SHABANA BEGUM**

Counsel: Ms. U. Tamanikaiyaroi with Ms. P. Kumar for the State
Mr. J. Reddy with Mr. R. Singh for both Accused Persons

Date of Hearing: 19th, 20th and 21st July 2022

Date of Closing Submission: 26th July 2022

Date of Judgment: 02nd August 2022

Date of Sentence: 08th August 2022

SENTENCE

1. Mr. Faizal Mohammed, the Court found you guilty of one Count of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act and one count of Defilement of Young Persons between 13 and 16 years of age, contrary to Section 215 of the Crimes Act and convicted to the same accordingly. Ms. Shahana Shabana Begum, the Court found you guilty of one count of Rape, contrary to Section 207 (1) (2) (a) and (3) read with Section 45 of the Crimes Act and one count of Defilement of Young Persons between 13 and 16 years of age, contrary to Section 215, read with Section 45 of the Crimes Act and convicted to the same accordingly.

2. It was proved at the conclusion of the hearing that both of you had obtained the trust and confidence of the two young Complainants, the First Complainant was 12 years old, and the Second Complainant was 15 years old at that time when they came to your place, initially with their mother, who worked for you as a housemaid and then by themselves on your invitation. Two of you had delicately but manipulatively groomed the two young Complainants. They were not in a position to refuse your proposition to participate in these scandalous sexual activities but to hesitantly submit themselves due to the soft but scheming pressure inserted on them, especially by the Second Accused. Having obtained their participation in that manner, Ms. Shahana Shabana Begum, you had accompanied the First Complainant to the bedroom, where the First Accused was waiting. Mr. Faizal Mohammed, you then penetrated the vagina of the First Complainant, who was under the age of 13 at that time, with your penis. Ms. Begum, you were present beside the bed, assisting your husband.
3. In the same manner, you had taken the Second Complainant to the bedroom on another occasion where Mr. Faizal had penetrated the vagina of the Second Complainant with his penis. It was further proved that two of you had continuously committed these crimes against the two Complainants on several occasions. The First Complainant stated that it had happened approximately 20 times. The Second Complainant testified that it occurred nearly ten times.
4. This is a case of sexual exploitation of two young girls by two known persons. Sexual exploitation of children has become a social menace. The social enigma of abusing children for sexual gratification needs to address promptly and effectively. Therefore, I find the objective seriousness of these crimes is high.
5. The primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for offences of this nature to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.

6. These four offences are founded on the same series of offences with similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
7. The maximum penalty for the offence of Rape is life imprisonment. The tariff for the Rape of a child is between 11 to 20 years imprisonment. (**Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2nd of November 2018)**). Ten years imprisonment is the maximum penalty for the Defilement of Young Persons between 13 and 16 years of age. The applicable tariff for the Defilement of Young persons between 13 and 16 years of age is between 2 and 8 years imprisonment. (**State v Mawi [2019] FJHC 324; HAC17.2017 (12 April 2019, State v Dinono - Sentence [2019] FJHC 871; HAC336.2018 (5 September 2019)**).
8. The Victim Impact Reports of the two Complainants stated that these crimes have adversely affected their lives emotionally and psychologically. According to the Victim Impact Report of the First Complainant, this crime has shattered her self-confidence and reduced her to a withdrawn person. Due to this crime, the Second Complainant finds it uneasy to build and trust human relationships. Both the Complainants are facing unbearable hardship at school as their fellow students are now aware of this incident. Both episodes of these sexual exploitations lasted over several months, making the two Complainants silently endure the emotional and physical suffering caused by this crime. Considering these reasons, I have no hesitation in finding the level of harm in the offences is exceedingly high.
9. The First Accused had manipulatively lured the First Complainant into this trap by showing her a pornography video on his mobile phone. The Second Accused then persuaded and encouraged the First Complainant to participate in this illicit sexual conduct, assuring her that it would be fun and nothing else. The Second Accused approached the Second Complainant proposing this sinister proposition using the trust and companionship she built up with the Complainant. Ms. Begum, you had consistently pressured the Second Complainant, blackmailing her with the same trusted friendship you built up with her. Therefore, I find this is a meticulously planned crime that two of you had carried out secretly over several months. Accordingly, I find each of your culpability is significantly high.

10. Taking into consideration the seriousness of these offences, the applicable tariff, the level of harm and the level of culpability, I select 16 years as the starting point for each of you.
11. The two Complainants considered you as their own family and called you uncle and aunty. By committing this crime, both of you had breached the trust and respect they had in you. In addition, you also violated the confidence reposed in you by the parents of the two Complainants. The age difference between you and the two Complainants is significant. You have manipulatively exposed these two young sisters to adulthood, and sexual activities, preventing them from growing naturally with their age. I find these facts as aggravating circumstances of this crime.
12. In his mitigation submissions, the learned Counsel for the Defence explained your family background, which has no mitigatory value.
13. The learned Counsel for the Defence submitted that both of you are first offenders; hence, you are entitled to a substantive discount. In particular, Mr. Faizal, you have been a prominent and active member of your mosque and the community. I find that your previous good character, especially the fact that both of you have not been tainted with any prior convictions for an offence of sexual nature, and your community services would have allowed you to freely and secretly carry out this heinous crime without any suspicion of risk. The community had perceived you as a man and a woman of good character, not as a child paedophile. Therefore, I do not find that your previous good character and community services have much mitigatory value, and you are only entitled to a meagre discount.
14. In view of the reasons discussed above, I increased further two (2) years for the aggravating factors to reach eighteen (18) years. Because of your previous character, I reduced one (01) year. Accordingly, I reach seventeen (17) years imprisonment as your final sentence.

15. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find fourteen (14) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

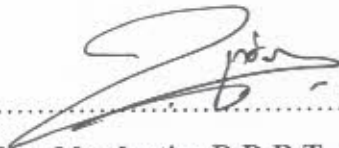
16. Accordingly, Mr. Faizal Mohammed, I sentence you to a period of seventeen (17) years imprisonment as an aggregate sentence for one count of Rape and one count of Defilement of Young Persons between 13 and 16 years of age as charged in the Information. Moreover, you are not entitled to parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
17. Ms. Shahana Shabana Begum, I sentence you to a period of seventeen (17) years imprisonment as an aggregate sentence for one count of Rape and one count of Defilement of Young Persons between 13 and 16 years of age as charged in the Information. Moreover, you are not entitled to parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

18. Both of you have been in remand custody for this case for nearly one (1) month and sixteen days before the sentence as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider two (2) months as a period of imprisonment you have already served.
19. Accordingly, the actual sentencing period that each of you has to serve is **sixteen (16) years and ten (10) months** imprisonment with a non-parole period of **thirteen (13) years and ten (10) months**.

20. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

08th August 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Jiten Reddy Lawyers for both Accused Persons.