

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 130 of 2021

STATE

V

VERAMO TIKOINAMENA

Counsel : Ms. S. Naibe for the State.
: Ms. K. Boseiwaqa and Mr. B. Makanjee for the
Accused.

Dates of Hearing : 31 May, 01, 02, 05 June, 2023
Closing Speeches : 08 June, 2023
Date of Judgment : 08 June, 2023
Date of Sentence : 26 June, 2023

SENTENCE

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

1. In a judgment delivered on 8th June, 2023 this court found the accused guilty of four counts of indecent assault and four counts of rape as charged and he was convicted him accordingly.
2. The brief facts were as follows:

- a. The accused is the step father of the victim and they were living in the same house. In the year 2021 the victim was 15 years of age and the accused was 37 years of age.
- b. One day between 1st and 31st May and from 6th to 8th June, 2021 the victim's mother was not at home and on all the above dates during the night the accused would enter the bedroom of the victim and lay behind her as she slept.
- c. On all occasions the accused forcefully kissed the victims neck turned her over and touched her breast over her clothes. The victim did not like what the accused was doing to her. Thereafter the accused removed the victim's pants and panty and had forceful sexual intercourse with her. The victim could not do anything since the accused held her tightly and was heavy.
- d. The accused threatened the victim not to tell anyone anything about what he had done to her otherwise he will do something to her. The victim was scared of the accused so she did not tell anyone anything.
- e. The victim did not consent to what the accused was doing to her. As a result of what the accused was doing the victim got pregnant, later the victim's aunt got suspicious after noticing the physique of the victim. When the victim's uncle asked the victim what had happened she told her uncle that the accused had impregnated her.
- f. The matter was reported to the police the accused was arrested, caution interviewed and charged.

3. The state counsel filed her sentence submissions including the victim impact statement and the defence counsel filed mitigation for which this court is grateful.
4. The following personal details and mitigation have been submitted by the counsel for the accused:
 - a) The accused is a first offender;
 - b) He is 38 years of age, Farmer;
 - c) Married with two children;
 - d) Earned about \$150.00 per week;
 - e) Is remorseful of his actions;
 - f) Promises not to reoffend and if given the opportunity he will reform himself;
 - g) Sole bread winner of the family;
 - h) Seeks forgiveness from the victim and the court.
5. 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.

AGGRAVATING FACTORS

6. The following aggravating factors are obvious:

- (a) Breach of Trust

The victim is the step daughter of the accused. The accused grossly breached the trust of the victim by his actions and also abused the sanctity of the relationship that existed between the two. The Supreme Court in *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (02 November, 2018)* at

paragraph 62 of the judgment endorsed the comments of the trial judge as follows:

“...Parents are the only trusted and dependable persons that a child has in her growing tender years. Turning that trusted dependable person into a monstrous demon who penetrated in to the innocent childhood of the child and destroy it with his own lustful sexual satisfaction, would undoubtedly jeopardise the child’s entire future life. Therefore, incest is a rape by extortion, in which a child’s very childhood becomes a weapon used to control her”.

(b) Planning

There is some degree of planning involved the accused abused the victim when her mother was not be at home. He knew the victim was naive, innocent and vulnerable and he continued with his unlawful conduct.

(c) Age Difference

At the time of the first incident the victim was 15 years of age whereas the accused was 37 years of age. The age difference is substantial.

(d) Exposing a child to sexual abuse

The accused had exposed the victim to sexual activity at a young age he basically robbed her of her innocence by exposing her to unexpected sexual encounters.

(e) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

- a) Is not comfortable with male members of her family after the incidents;
- b) Is embarrassed and nervous since she was pregnant at a young age;
- c) Got separated from mother and younger siblings;
- d) Have not been able to fulfil her dreams;
- e) Her life changed after the incidents.

(f) Prevalence of the offending

There has been an increase in sexual offence cases on juvenile victims by mature adults known to them. The accused being the mature of the two did not give a second thought about what he was doing he was bold and undeterred in what he did to the victim.

(g) Safety at home

The victim was at home in her bedroom where she was supposed to be safe but this was not to be due to the actions of the accused.

TARIFF

RAPE

7. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in *Gordon Aitcheson vs. The State, (supra)* has confirmed the new tariff for the rape of a juvenile to be a sentence between 11 years to 20 years imprisonment.

INDECENT ASSAULT

8. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment (*Rokota vs. The State, criminal appeal no. HAA 0068 of 2002*).

9. 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.”

10. I am satisfied that the 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 eight offences.

11. The Supreme Court in *Mohammed Alfaaz v State [2018] FJSC 17; CAV0009.2018 (30 August 2018)* has stated the above in the following words at paragraph 54 that:

*“It is useful to refer to the observation expressed by the Fiji Court of Appeal in *Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118* wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual offenders of sexual crimes committed against mothers, daughters*

and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”

12. Madigan J in *State v Mario Tauvoli HAC 027 of 2011 (18 April, 2011)* said:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

13. The Supreme Court in *Felix Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015)* mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

- (a) *whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) *whether there had been a breach of trust;*
- (c) *whether committed alone;*
- (d) *whether alcohol or drugs had been used to condition the victim;*
- (e) *whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*
- (f) *whether the impact on the victim had been severe, traumatic, or continuing;*
- (g) *whether actual violence had been inflicted;*
- (h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) *whether the method of penetration was dangerous or especially abhorrent;*

- (j) *whether there had been a forced entry to a residence where the victim was present;*
 - (k) *whether the incident was sustained over a long period such as several hours;*
 - (l) *whether the incident had been especially degrading or humiliating;*
 - (m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
 - (n) *Time spent in custody on remand.*
 - (o) *Extent of remorse and an evaluation of its genuineness;*
 - (p) *If other counts or if serving another sentence, totality of appropriate sentence.*
14. After assessing the objective seriousness of the offences committed I take 11 years imprisonment (lower end of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused has no previous convictions he comes to court as a person of good character. The sentence is reduced for mitigation and good character.
15. I note from the court file that the accused was remanded for 1 year 7 months and 8 days, in accordance with section 24 of the Sentencing and Penalties Act and in exercise of my discretion the sentence is reduced by 1 year 7 months and 10 days as a period of imprisonment already served. The final sentence is 16 years 4 months and 20 days imprisonment.
16. Mr. Tikoinamena you have committed serious offences against your step daughter who was like your biological daughter who you were supposed to protect and care. The victim was unsuspecting and vulnerable you cannot be forgiven for what you have done to her. I am

lost for words you are a shame to the society it was due to your lust for sexual gratification that you targeted the victim when he mother would not be at home. What of kind of a parent are you? Have you thought of the misery, shame and pain you have brought to the victim, no amount of repentance can get the victim to lead a normal life. At an age when the victim was to have enjoyed her childhood you made her pregnant. You are a menace and a disgrace to the society a long term imprisonment term is inevitable.

17. Rape is not only a physical act, it destroys the very soul of the victim, and also brings about a sense of hopelessness and anxiety which cannot be cured. You have scarred the life of the victim forever. There is no doubt that a positive and happy childhood memories contribute towards child development which is an inspiration for the future. Unfortunately, this is not so for the victim.
18. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was the accused's step daughter aged 15 years compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
19. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.

20. Considering the above, I impose 14 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 and also meet the expectations of the community which is just in the circumstances of this case.
21. In summary, I pass a sentence of 16 years 4 months and 20 days imprisonment with a non-parole period of 14 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.
22. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge

At Lautoka

26 June, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.