

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 92 of 2022

STATE

vs.

- 1. MOHAMMED RIYAZ**
- 2. VIKASHNI KAJAL KUMAR**

Counsel: Ms. Vavadakua for the State
Mr. A. K. Singh for both the Accused

Date of Hearing: 18th to 24th April 2023

Date of Closing Submission: 12th May 2023

Date of Judgment: 19th May 2023

Date of W/Sentence/Mitigation Submission: 26th June 2023

Date of Sentence: 29th June 2023

SENTENCE

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

Introduction

1. After the trial the 1st Accused Mohammed Riyaz and the 2nd Accused Vikashni Kajal Kumar were convicted of the offence of Domestic Trafficking in Children contrary to section 117(1),(a),(b),(c)(i) of the Crimes Act. Both the parties filed their written submissions on sentencing and mitigation on the 28th June, 2023 and 26th June, 2023 respectively. Upon considering this submissions and the relevant fact I will now proceed to determine the sentence for the Accused separately.

Brief Facts of the Offending

2. The first and the second Accused are husband and wife. The victim NB is the biological daughter of the first Accused and the second Accused is her step-mother. The first Accused had a relationship with Janifa Bibi who is the first Accused's cousin. The victim was born due to this relationship. With the pregnancy the first Accused left and abundant Janifa and she gave birth and brought up the victim on her own. However, when NB was 9 years old Janifa appears to have neglected or abundant the victim. The Social Welfare then intervened and NB was handed over to the 1st and 2nd Accused. NB was with them for 7 years until she was once again handed over to Janifa in 2018 upon a certain complaint made to the police.

3. The 1st Accused was working for a company of which a European national named Shane Nolan was overall in-charge of the company in Fiji who was referred to as the boss of the 1st Accused. Therefore, Shane Nolan was the 1st Accused's boss so to say. The 1st Accused has taken NB along with the 2nd Accused to a Motel in Nausori named Siri's Apartment. At the apartment they have met Shane Nolan and the 1st Accused had left the 2nd Accused and NB in the room with Shane Nolan and gone out of the apartment. The 2nd Accused has forced NB to engage in sexual intercourse with Shane Nolan and she had been present in that room when Shane Nolan had sexual intercourse with her. Thereafter, the 1st Accused had returned exchanged pleasantries with Shane Nolan and all have left. This is the incident on which the charge was based and both the Accused were convicted.

4. Both the Accused persons whilst having the custody and care of NB have made available and provided NB to Shane for sexual services. As the biological father and the step-mother they were required to protect and care for her. However, both the Accused have completely abdicated the said obligation and parental duties and abused their position by exposing and transporting the victim who was the minor child to provide sexual services. This by any standard is extremely abhorrent and is against all civilized norms. Both the Accused person have without any regard to the victim's age and childhood exposed her in this manner in total disregard of her rights as a child. These are the salient fact of this offending.

Sentencing Regime

5. The sentence prescribed by law for the offence of Domestic Trafficking in Children is 25 years. This is amongst one of the highest sentence prescribed by Crimes Act which clearly demonstrates the seriousness of this offence. As for the tariff there is no guideline judgment specifically determining the tariff applicable to this offence.
6. However in **State v Werelagi** [2019] FJHC 1147; HAC425.2018 (5 December 2019) Goundar J., considering the issue of tariff for the offence of Domestic Trafficking in Children opined that;

“[5] The offences are grave because they involve a vulnerable child. There is no established tariff or a starting point for these offences. The only comparable case is State v Raikadroka & - Sentence [nce [2014] FJHC 409; HAC80.2013 (9 June 2014), in which Madigan J suggested a range of 12 to 18 years’ imprisonment for offences of a similar nature. That case involved slaved trafficking of two children aged 15 and 17 years. The overseas cases are of little relevance because of different sentencing regimes or different circumstances of offending.”

7. The Court of Appeal in the case of Raikadroka v State [2020] FJCA 12; AAU80.2014 (27 February 2020) Prematilaka, JA., approved and adopted the tariff of 12 to 18 years for the offence of Domestic Trafficking in Children as considered in **State v Werelagi** and held thus;

[100] Therefore, in principle I cannot find fault with the range of sentence or tariff of 12-18 years for the offence of domestic trafficking in children. Nor can I criticize the starting point of 15 years being the middle of the range or the aggravating and mitigating circumstances considered by the learned trial judge.

8. This court adopts and will apply the said tariff of 12 to 18 years imprisonment.

Victim Impact Statement

9. The victim impact statement of NB was tendered to this court on the 28th June, 2023. She has provided a lengthy statement and has also written a letter to the Accused. On the perusal of the same is apparent that NB has suffered great emotional and psychological harm and trauma. According to which she says that she was violated and drugged and trafficked to foreign national Shane Nolan. She was forced to abandon her

education and her childhood was stolen and she suffered unimaginable horror and exploitation.

10. This trauma she says prolonged for over 7 years during which period she had not been allowed to contact her biological mother. She had been suffering from constant fear, anxiety and even fear of being killed. She had felt isolated, suffered depression and sleepless nights. She says these events have permanently damaged her life and she has lost faith in life and no longer trust anybody. Even after she came back to her biological mother these feelings have continued. She had continued to have memory loss, and a profound sense of loneliness. The court proceedings has further traumatized her. She continues to have negative thoughts and nightmares, mood changes, irritability and now is short tempered. In conclusion she says that Riyaz and Vikashni stole her childhood.
11. She has also written a letter to the Accused persons, according to the contents I observe the expression of a profound and intent feeling of self-pity, sadness and anger, however the contents of which I may not consider. Thus I don't consider it necessary to reproduce what is said there. She is suffering due to what both the Accused have done to her. It is clear from the victim impact statement that, this offending has had a very significant and long-lasting psychological impact on the minor that requires consideration in sentencing.

Sentence

12. I am mindful that the fundamental purpose of sentencing is denunciation, specific and general deterrence, separation of offenders from society, rehabilitation, reparation for harm done to victims and the promotion of a sense of responsibility in offenders. A sentence must also be proportionate to the gravity of the offence and the offending.

Aggravating Circumstances

13. Now I will consider the aggravating factors.
 - a. There is a serious breach of trust. The Accused persons as NB's own father and the step-mother who had custody and care and was endowed to look after and protect the victim. The Accused have facilitated and provided this child NB for sexual services and exposed her to sexual activity. Accused persons,

especially the 2nd Accused got her to undress and have sexual intercourse in her presence.

- b. This offending certainly involved planning and deliberation. Accused persons were motivated by the prospect of gaining an advantage from the employer or boss and also financial or material gain. They manipulated the victim and used the emotional bond as a way to so manipulate and control NB.
- c. The evidence revealed that the Accused persons administered drugs or such substance to maintain control over the victim or as inducements.
- d. NB was also exposed possible sexually transmitted infections.
- e. Both Accused persons showed no remorse or repentance during the trial.
- f. Accused persons have exposed the innocent mind of a child to sexual activity at such a tender age and had no regard to her rights as a child and a human being and her right to have a happy, unmolested and peaceful childhood.
- g. Accused persons have certainly caused untold misery to NB as well to her mother. Accused persons have completely destroyed and denied NB of a peaceful childhood.

Mitigating Circumstances

14. Now I will consider the mitigating circumstances.

- a. 1st Accused Mr. Riyaz is 42 years old and the 2nd Accused Ms. Vikashni is 30 years old. You are married to each other and have two children attending school. Mr. Riyaz is said to be the sole bread winner working as a carpenter, whilst Ms. Vikashni does domestic duties. It is also submitted that you are looking after 70 year old sickly mother. These are all personal circumstances.
- b. I observe that both the Accused persons were entrusted with the custody of NB when she was neglected and abandoned by her mother when she was 9 years old. Then they did provide her with food and shelter for 7 years thereafter.

- c. I observe that both the Accused persons have no previous convictions as such I will consider them as being persons of previous good character.
15. Considering the objective seriousness of your offending I would now consider the sentence in common for both of you that will be imposed separately. I would pick 12 years imprisonment being the lowest end of the tariff as the starting point. As for aggravating factors I will add 4 years which will bring each Accused person's sentences to 16 years imprisonment. As for the mitigating factors aforesaid I will deduct 2 years, leaving a balance of 14 years imprisonment for both the Accused persons separately.
16. Accordingly, I hereby sentence the 1st Accused Mohammed Riyaz and the 2nd Accused Vikashni Kajal Kumar separately to periods of fourteen (14) years imprisonment for the offence of Domestic Trafficking in Children for which each of them stand convicted.

Non-Parole period

17. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a ten (10) year non-parole period would serve the purpose of this sentence. Hence, both the Accused persons are not eligible for parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
18. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to state that the purpose of this sentence is to punish the Accused persons in a manner that is just in all the circumstances of the case.

Head Sentence

19. Accordingly, I sentence both Accused persons to periods of fourteen (14) years imprisonment for the offence of Domestic Trafficking in Children as charged and convicted. However, you are not entitled to parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

20. 1st Accused Mr. Mohammed Riyaz was in remand for 40 days and Ms. Accused Vikashni Kajal Kumar for a period of 26 days. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 1½ months of the 1st Accused Mohammed Riyaz and a period of 1 month in respect of the 2nd Accused Vikashni Kajal Kumar months be considered as imprisonment that each of the Accused has already served. Accordingly, the actual sentence is as follows:

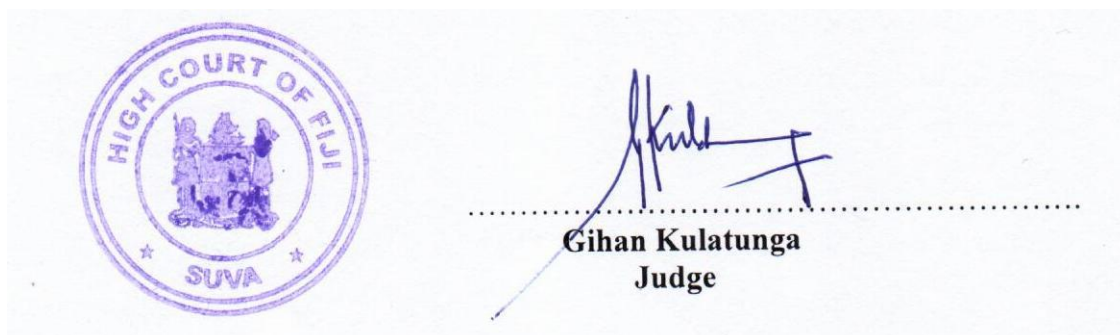
- (i) 1st Accused Mohammed Riyaz a period of 13 years and 10 months and 15 days imprisonment with a non-parole period of 9 years and 10 months and 15 days.
- (ii) 2nd Accused Vikashni Kajal Kumar a period of 13 years and 11 months imprisonment with a non-parole period of 9 years and 11 months.

Absence of the Accused

21. Both the Accused persons were absent this morning and as this court was satisfied that the reasons for their absence was not acceptable, unrealistic and fallacious this court made order to proceed in their absence and decided to pronounce this sentence ruling in their absence by virtue of the provision of section 14 (2)(h)(i) of the constitution.

22. This sentence will coming into operation and be effective from the date of the arrest and committal to custody each of the Accused persons respectively.

23. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva

29th June 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

AK Singh Lawyers for both the Accused