

**IN THE HIGH COURT OF FIJI AT SUVA**

CASE NO: HAC. 132 of 2016

[CRIMINAL JURISDICTION]

**STATE**

**V**

**INOKE LAGIVERE**

**Counsel** : Ms. S. Serukai for State  
Ms. E. Radrole for Accused

**Hearing on** : 23<sup>rd</sup> - 25<sup>th</sup> May 2017

**Summing up on** : 29<sup>th</sup> May 2017

**Judgment on** : 29<sup>th</sup> May 2017

**Sentence on** : 30<sup>th</sup> May 2017

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "VR".)

**SENTENCE**

1. Inoke Lagivere, you stand convicted of the offence of defilement contrary to section 215(1) of the Crimes Act 2009.
2. In brief, you had sexual intercourse with the victim who was 14 years old at the material time. The victim and you are related as cousins. You were 27 years old at the time of the offence. When you gave evidence, you admitted that you solicited the victim to have sexual intercourse with you.

3. Pursuant to section 215(1) of the Crimes Act 2009 read with section 3(4) of the Sentencing and Penalties Act 2009, the maximum punishment for defilement is an imprisonment for 10 years.
4. The offence of defilement under section 215(1) of the Crimes Act is designed to protect young girls below the age of 16 years and above the age of 13 years who may be physically ready to have sexual intercourse with the onset of puberty from sexual exploitation until they attain a certain level of maturity.
5. Based on the previous sentencing decisions I concluded in the case of *State v Chand* (2016) FJHC 889; HAC314.2015 (6 October 2016) that the sentencing tariff for the offence of *defilement of young person between 13 and 16 years of age* under section 215(1) of the Crimes Act is 2 to 4 years. However, as I highlighted in *Chand* (supra), 4 years imprisonment was taken as the higher end of the tariff when the maximum sentence for the offence of *defilement of girl between thirteen and sixteen years of age* (under section 156 of the Penal Code) was 5 years imprisonment.
6. It is pertinent to note that the tariff for the offence of indecent assault is 12 months imprisonment to 4 years where the offence of indecent assault carries a maximum sentence of 5 years imprisonment under the Crimes Act. This sentencing tariff was also established when the Penal Code was in force and the maximum sentence for the offence of indecent assault under section 154 of the Penal Code is also 5 years imprisonment. However, the maximum sentence for the offence of defilement of a person between 13 and 16 years of age is now an imprisonment term of 10 years as I have stated above.
7. Therefore, in my view, the question as to whether the higher end of the sentencing tariff of the offence of *defilement of young person between 13 and 16 years of age* under section 215(1) of the Crimes Act should be increased in order to give effect to the intention of the lawgivers need to be considered in an appropriate case.

8. I take 02 years imprisonment as the starting point of your sentence.
9. I consider the following as aggravating factors;
  - a) You are related to the victim as an elder cousin. You were in a position of trust;
  - b) The age difference between you and the victim is 13 years;
  - c) You took advantage of the victim's naivety.
10. I consider the following as mitigating factors;
  - a) You are a first offender; and
  - b) You had cooperated with the police.
11. Considering the above aggravating factors I add 02 years to the starting point and in view of the mitigating factors I deduct 01 year of your sentence.
12. Accordingly, I hereby sentence you for a term of 03 years imprisonment. I order that you are not eligible to be released on parole until you serve 01 year and 06 months of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act 2009.
13. Section 24 of the Sentencing and the 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."*
14. You have spent about 04 months in custody in relation to this matter. In view of the provisions of section 24 of the sentencing and Penalties Act 2009 the period you have been in custody for this case shall be regarded as time already served by you. I hold that the period to be considered as served should be 04 months.

15. In the result, you are sentenced to 03 years imprisonment with a non-parole period of 01 year and 06 months. Considering the period spent in custody, the time remaining to be served is;

Head Sentence - 02 years and 08 months

Non-parole period - 01 year and 02 months

16. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitors for the Accused : Legal Aid Commission, Suva.