

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 09 of 2018

STATE

v

PETAIA NABUKABUKA

Counsels: Mrs. D. Kumar for the State
Ms. K. Boseiwaqa (L.A.C.) for the Juvenile

Date of Plea: 25 July 2018
Date of Mitigation: 27 July 2018
Date of Punishment: 01 August 2018

FINDING AND ORDERS

1. The accused in this case is a juvenile, a “young person” in terms of the Juvenile Act. It is therefore forbidden that any media organization publish information that may lead to the identification of the accused or the victim in this case, although the facts of the case and resulting orders may be published.
2. The accused is sixteen years of age (born 16 May 2002) and lives with his parents in Vanua Levu.
3. On the 23rd January 2018, the victim aged 9 years of age was walking from her home in the early evening to school to attend

revision classes. On the way the accused, who was then 15 years old intercepted her and led her to a grassy area near a drain. He told her to remove her shorts and underwear, which she did and he removed his. He then proceeded to penetrate her with his penis. The victim was in pain, crying. The accused desisted and dressed himself. He told her not to tell anybody and told her to carry on to school. When she got home, her mother noticed blood on her underwear. The child told her parents that the accused had poked her with his finger.

4. A medical examination the next day revealed that her hymen was not intact and there was a laceration to her genitals.
5. The accused was arrested and admitted the offence to the police. He told them that he knew that the victim was very young and that it was wrong but he had seen sex in movies and wanted to try it for himself.
6. The accused willingly entered a plea of guilty in this Court to the charge of rape and on agreement to the facts rehearsed above, the Court made a finding of guilty to the offence.
7. Counsel representing the accused told the Court in mitigation that he left school in November last year before finishing Form 3. He was persuaded by peers to leave home and go to Labasa to work as a cane cutter.
8. He has since returned home and earns \$100 per week farming root crops. He has a strong desire to return to school. He has a clear record and is very remorseful. His parents are very supportive and determined to monitor and guide him in the future.

9. On arrest he had been remanded at the Labasa Police Station and that had been an extremely bad and edifying experience for him. The accused and the victim live in the same settlement and although they are distantly related, they had little social contact with each other.
10. Two social welfare reports were obtained one on each of the accused and the girl.
11. The report relating to the juvenile accused confirmed that he is remorseful, appreciates the seriousness of his actions and he is determined to never sexually abuse another again.
12. In the last term of school in 2017 he went to Labasa to visit his cousin and ended up staying there working as a cane cutter. He had "lost his way" and wanted to distance himself from parental discipline. He is now wanting to return to school and is reunited with his parents.
13. His father is an elder in the church and he states that he will in future be a responsible parent and supervise his son closely.
14. The Social Welfare Report concludes with the recommendation that he has constant and stable parental guidance and supervision to guide him through this critical stage of his young life.
15. The report on the victim states that she has been psychologically and emotionally affected and her parents have been advised to give her loving support.
16. Professional Counseling has been arranged for her.

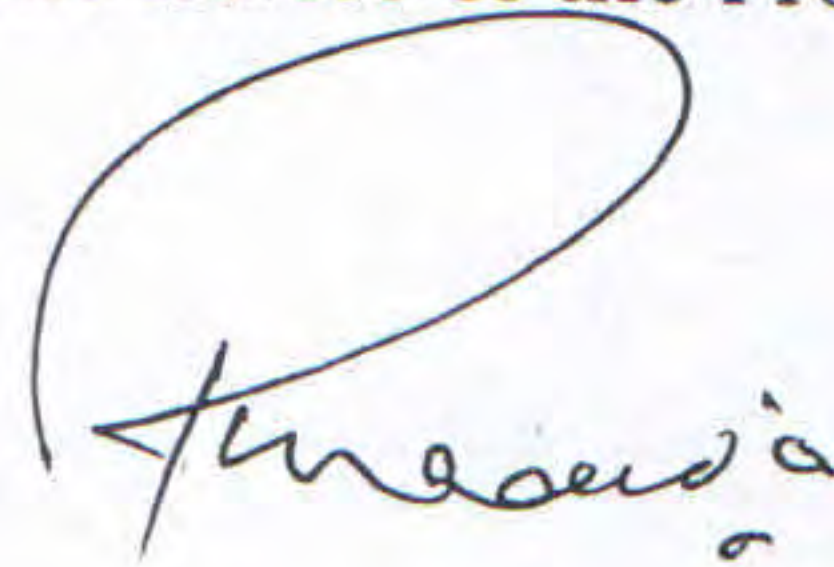
Analysis

17. Arriving at an appropriate punishment for a juvenile charged with criminal harm of another involves a very careful balancing exercise.
18. Rape is of course a very serious offence for which adult offenders receive very long terms of imprisonment.
19. The terms of both the Juvenile Act and the Sentencing and Penalties Act discourage the incarceration of a juvenile except perhaps for homicide offences where the maximum term of imprisonment can be no more than two years and then not in an institution housing convicted adult prisoners.
20. In the case of an offender under the age of 17, a court must explore every avenue of punishment as an alternative to imprisonment.
21. As in every case of rape or other sexual abuse the victim will be psychologically impaired and forced to relive the trauma of the event for a very long time. Such damage must be a factor to consider in the punishment orders made against the perpetrator.
22. The Court accepts that the accused is very remorseful and his parents determined to see that he is steered back on to a responsible and law abiding path.
23. The young man has his whole life ahead of him with a strong desire to resume studies and harsh penalties meted out to him now will certainly ruin his future career and status in the community.

24. Pursuant to section 16 of the Sentencing and Penalties Decree, I order that **no** conviction be recorded against the accused following on from my finding of guilty of the offence.
25. In addition I make the following orders:

Orders

1. The accused is placed on probation for a period of 18 months from today.
2. Should the accused not comply with directions of the Probation Officer, then the officer is to report such insubordination to the Court and the accused will be brought back to Court for a review of his punishment.
3. The accused is to live with his parents for the next 18 months and not to leave their care without the leave of this Court, such leave only to be given on the advice of the Probation Officer.



P. K. Madigan
Judge



At Labasa
01 August 2018