

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 99 of 2019

[CRIMINAL JURISDICTION]

STATE

V

TL [JUVENILE]

Counsel : Ms. I. Rakaria for State
Ms. L. David for Accused

Date of Sentence : 21 June 2019

[The name of the victim and the juvenile offender are suppressed. Accordingly, the victim will be referred to as "SW" and the offender as "TL". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said victim or the offender.]

ORDER

1. TL, you have pleaded guilty to the charge produced below and were found guilty as charged accordingly;

Statement of Offence

RAPE: contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

TL on the 26th day of October 2018 at Samabula, in the Central Division, had carnal knowledge of SW, by inserting his penis into the anus of SW, a child under the age of 13 years and at the time of committing the act, TL knew that his conduct was wrong.

2. You have admitted the following summary of facts;

1. *The complainant is SW, 7 years old – DOB: 08/05/2011, class 2 student, residing at Nanuku Settlement, Vatuwaqa. Attached is his birth certificate as TL1.*
2. *The juvenile is Timoci Lewagaragara, 14 years old, - DOB: 06/11/2004, student at John Wesley, residing at Nanuku Settlement, Vatuwaqa. Attached is his birth certificate as TL2.*
3. *The complainant resides with his parents – Salote Vuli and John Lee and his siblings Annie, Waqa, Lee and Frances.*
4. *On 26th October 2018, the complainant was playing hide and seek with his friends Poasa and Manasa at Manasa’s house. Whilst they were playing, the juvenile called the complainant to take his phone to the juvenile so they could watch movies.*
5. *They were watching movies then the juvenile told the complainant to go inside a room. When the complainant refused, the juvenile then pushed the complainant inside a room, locked it and told the complainant to lay down.*
6. *The juvenile pulled the complainant’s trousers down below his knees. The juvenile pushed the complainant to the bed to lay down and when the complainant was laying on the bed, facing down, the juvenile pulled down his pants, took out his penis and inserted his penis inside the complainant’s anus.*
7. *The complainant was shouting and crying and he told the juvenile to stop but the juvenile refused.*
8. *Manasa and Poasa tried to open the door but the door was locked and then Poasa called Manasa’s elder brother, Jo to open the door. The juvenile then removed his penis from the complainant’s anus.*
9. *This matter came to light when Poasa told his mother and his mother told the complainant’s mother. This matter was then reported.*
10. *The complainant was medically examined on 1st November 2018 at Medical Services Pacific. Specific medical findings states:*
 - (a) *Anal examination (knee – chest position)*
 - (b) *1 scar was noted at the outer part of the anus, at 12 o’clock position.**Attached is his birth certificate as TL3.*
11. *At the time of the offence, the juvenile knew that his conduct was wrong.*

3. You admitted that you knew that what you did was wrong.
4. Pursuant to section 207(1) of the Crimes Act 2009 ("Crimes Act") read with section 3(4) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), the maximum punishment for rape is life imprisonment. It is settled that the sentencing tariff for rape of a child victim is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
5. Section 30 of the Juveniles Act reads thus;

Restrictions on punishment of juveniles

30.- (1) No child shall be ordered to be imprisoned for any offence.

(2) No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A young person shall not be ordered to be imprisoned for more than two years for any offence.

6. Section 2 of the Juveniles Act defines "child" as a person who has not attained the age of fourteen years.
7. According to your birth certificate, you were born on 06/11/2004. The date of offence is 26/10/2018. Therefore, at the time of offence you were below the age of 14 years and you were a child in terms of the provisions of the Juveniles Act.
8. You are no longer a child but a young person according to the provisions of the Juveniles Act. However, the current position is that an offender's age at the time of offending should be considered when the provisions under section 30(1) of

the Juveniles Act are applied. (See *Komaisavai v State* [2017] FJCA 91; AAU154.2015 (20 July 2017))

9. Therefore when it comes to sentencing, you should be considered as a child. It follows that I cannot order you to be imprisoned.
10. On this issue of ordering juveniles to be imprisoned, it is pertinent to note that section 30(2) clearly says that 'no a young person shall be ordered to be imprisoned . . . unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained'.
11. Then again section 30(3) says that a young person shall not be ordered to be imprisoned for more than 02 years.
12. In my view, section 30(3) cannot be read in isolation and it should be read together with section 30(2). Accordingly, my reading of the above provisions now is that a young person can be ordered to be imprisoned up to a maximum of 02 years only if the court finds that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained. Detaining a juvenile offender at the Juvenile Development and Rehabilitation Centre does not amount to the juvenile being imprisoned.
13. You have raped a child who was 7 years old at the time. You have pushed the victim into a room and then locked the door before you penetrated his anus with your penis. You continued to penetrate the victim's anus even when the victim was crying in pain. These are the aggravating factors in this case. On the other hand, you have entered an early guilty plea.
14. I heard the evidence of the Welfare Officer of the Fiji Juvenile Rehabilitation and Development Centre assigned to you. This is the officer who had prepared the

report submitted to this court initially. He confirmed what he had stated in his report and referring to you, he said that;

"He has shown that he still can improve given the right environment. [The juvenile] still have ability to go back to school since he is still young, still has a bright future ahead of him given the right support. The juvenile is [a] hard working person. He has shown [this] by his response towards the daily programs at the Centre. These programs include basic hygiene, farm programs and outdoor sporting activities. The juvenile is also a neglected child from home as shown during his remand term. There has not been any effort made by the family to visit him."

15. That was his opinion at the time he prepared his report dated 30/04/19. However, he also said that there had been a change of attitude in you since the said report was submitted and you had gone to the extent of passing sexual remarks on one of the female officers at the Centre.
16. This conduct of yours indicates that whatever the reason which led you to commit this offence is still active in your mind and it is not yet resolved. You have most probably learned this behaviour from what you have witnessed in the past. Therefore, you still require guidance and help. Given the information provided by the welfare officer and your behaviour, your parents appear to have neglected in their duties to guide you and I am inclined to form the view that they are not in a position to guide you.
17. The welfare officer in his evidence explained in brief about the nature and the scope of the work carried out in the Fiji Juvenile Rehabilitation and Development Centre ("Centre"). According to him, at the Centre,
 - a) Programs which include basic hygiene, farm programs and outdoor sporting activities are conducted;
 - b) Steps are taken to send juveniles to school. If possible the same school the juvenile was schooling before he was arrested. However, in the

absence of a specific order from a court the practice is that the juveniles who are detained for longer periods (1 to 2 years) are sent to school;


- c) Steps are taken to send juveniles to technical colleges for vocational training like cookery, welding, carpentry and joinery at the National Certificate Level; and
 - d) Juveniles are sent for counselling if there is an order from a court to that effect.
18. The aforementioned welfare officer also recommended for you to be kept at the Centre for a period more than one year. He said the minimum period you should be kept in order to expect a change in your attitude and behavior is 06 months. It is pertinent to take note of the fact that the capacity of the Centre is to accommodate 15 juveniles at any given time. But there had been occasions where the Centre had to accommodate 25 juveniles.
19. Considering all the circumstances in this case, I order you to be detained at the Fiji Juvenile Rehabilitation and Development Centre for a period of 01 year. I would leave it to the discretion of the Director of the Centre to decide in terms of section 38 of the Juveniles Act whether you should be kept under the care of the said Director after the expiry of the said 01 year period.
20. In view of the fact that your parents have neglected in their duties to properly look after you, I have decided to impose a fine on them. A fine of \$120 is accordingly imposed on your father and this should be paid on or before 21/12/2019. This fine can be paid at once or in six installments. That is \$20 each month.

21. In the result;

- a) The juvenile offender should be detained at the Fiji Juvenile Rehabilitation and Development Centre for a period of 01 year effective from today;
- b) The Fiji Juvenile Rehabilitation and Development Centre should take steps to include the juvenile in an appropriate counselling program;
- c) The Director, Fiji Juvenile Rehabilitation and Development Centre is hereby directed to exercise his discretion in deciding whether to keep the juvenile offender under his care in terms of the provisions of section 38 of the Juvenile Act at the expiry of the said 01 year period;
- d) The juvenile offender's father is ordered to pay a fine of \$120 at the Suva High Court Criminal Registry; and
- e) The said fine should be paid within a period of six months from today either at once or in installments of \$20. The total amount to be paid on or before 21/12/19.

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




Vincent S. Perera
JUDGE

Solicitors;

Director of Public Prosecutions for the State
Legal Aid Commission for the Juvenile