

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 299 OF 2019

STATE

V

S. M [Juvenile]

Counsel : Ms. S. Naibe for the State.
: Ms. E. Radrole for the Juvenile.
Ms. N. Turaga for and on behalf of the Social
Welfare Department.

Date of Hearing : 27 August, 2020

Date of Punishment : 17 September, 2020

PUNISHMENT

(The names of the victim and the juvenile are suppressed they will be referred to as A.N and S.M respectively)

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 17th October, 2019:

Count 1

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(c) and (3) of the Crimes Act 2009.

Particulars of Offence

S.M on the 28th day of July, 2019 at Sigatoka in the Western Division, penetrated the mouth of A.N, a child under the age of 13 years, with his penis.

Count 2

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) and (3) of the Crimes Act 2009.

Particulars of Offence

S.M on the 28th day of July, 2019 at Sigatoka in the Western Division, penetrated the anus of A.N, a child under the age of 13 years, with his penis.

2. On 2nd June, 2020 the juvenile pleaded guilty to the above counts in the presence of his counsel, thereafter on 10th August, 2020 the juvenile understood and admitted the summary of facts read.
3. The brief summary of facts is as follows:
On 28th July, 2019 the victim of 6 years and a year 2 student was helping her aunt Ana in cleaning the house, after lunch the juvenile (16 years) came to massage the victim's uncle. After a while, the juvenile joined the victim and other children playing outside the house.
4. Whilst playing, the juvenile asked the victim to accompany him to Rararua Village, on the way the juvenile took the victim to a vacant house, inside the vacant house he locked the doors, took off his pants, showed his penis to the victim and told her to suck it. The juvenile

forcefully held the back of the victim's head and pushed it towards him making the victim suck his penis.

5. After this, the juvenile took the victim to the nearby river removed her pants and penetrated his penis into her anus. The victim shouted since it was painful, the juvenile covered her mouth with his hand.
6. Whilst returning home the victim saw a light approaching them the juvenile covered the victim's mouth with his hand and both hid by the bushes. The juvenile warned the victim not to tell anyone about what he had done to her.
7. When the victim went home she told her aunt about what the juvenile had done to her. The matter was reported to the police.
8. The victim was medically examined on the same night which showed a superficial abrasion in the anal area. The juvenile was arrested, caution interviewed and charged.
9. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his own freewill.
10. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences of rape as charged. In view of the above, the court finds the juvenile guilty as charged.
11. The learned counsel for the juvenile presented the following mitigation:

- a) The juvenile was 16 years at the time of the offending;
- b) Resides with his parents;
- c) Assists his parents by working in the farm;
- d) Pleaded guilty at the first available opportunity;
- e) Cooperated with the police;
- f) First and young offender;
- g) Is sincerely remorseful;
- h) Seeks forgiveness and mercy of the court;
- i) Promises not to re-offend.

REASONS FOR THE COMMISSION OF THE OFFENCE

12. According to the juvenile's counsel the juvenile was influenced by his peers in the village which resulted in wrong judgment by the juvenile.

TARIFF

13. The maximum penalty for the offence of rape is life imprisonment. According to the case of *Aitcheson vs The State [2018] FJSC 29, CAV 0012 of 2018 (2 November, 2018)* the tariff for the rape of a juvenile is an imprisonment term between 11 years and 20 years.
14. The juvenile falls under a special categorization when it comes to punishment under section 30 (3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

AGGRAVATING FACTORS

15. The following aggravating factors are obvious in this case:

a) Breach of Trust

The juvenile is the maternal uncle of the victim. The victim went with the juvenile because she trusted him. The juvenile breached the trust of the victim by his actions.

b) Planning

There is a degree of planning by the juvenile whereby he asked the victim to accompany him to Rararua Village from Narata Village but took her to a vacant house on the way when they were away from the victim's village.

c) Victim was vulnerable and helpless

The victim was alone, vulnerable, and helpless the juvenile took advantage of the situation and the circumstances that prevailed at the time.

d) Age difference

The victim was 6 years of age and the juvenile was 16 years, the age difference is substantial.

e) Victim Impact Statement

In the victim impact statement the victim mentions that as a result of the incidents she wants to be alone, and she is always fearful when she sees men and boys.

SOCIAL WELFARE REPORT

16. As per the order of this court the Social Welfare Department conducted a house assessment and interviews before compiling a pre-punishment report for the juvenile.

17. The Social Welfare Department recommends the following for the juvenile:
- a) Probation orders be made since the Social Welfare Department has qualified probation officers to supervise the juvenile. The officer does not recommend detention at the Fiji Juvenile Rehabilitation and Development Centre due to incidents of bullying which will not be in favour of the juvenile.

PARENTAL SUPPORT

18. The parents of the juvenile were in court they have pledged their full support for their son. Both admitted it was due to their fault the juvenile went into wrong peer group influence. The parents have seen a positive change in their son after they started to counsel him and pay more attention to him and they assure the court that they will continue with their supervision, guidance and support for their son. The changes they have seen is good and they are confident their son will be able to make a better citizen.
19. As a sign of their commitment both the parents of the juvenile are happy to enter into a bond of \$500.00 each and are willing to participate in any programs the Social Welfare Department may wish them to be part of with their son.
20. 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.”

21. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate punishment for the two offences.
22. Considering the objective seriousness of the offences committed I select 1 year imprisonment as the aggregate punishment of both the offences. For the aggravating factors, I increase the punishment by 3 years. The interim punishment now stands at 4 years imprisonment.
23. For the early guilty plea which I consider to be genuine and mitigation I reduce the punishment by further 2 years, the punishment now is 2 years imprisonment. From the court file the juvenile has been in remand for 7 months and 19 days. The final aggregate punishment is now 1 year and 4 months and 11 days for the two counts of rape the juvenile is charged with. In my view the remand period of 7 months 19 days at the Fiji Juvenile Rehabilitation and Development Centre was enough punishment.
24. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final aggregate punishment since it does not exceed 3 years imprisonment.
25. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where

suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

26. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment or a suspended punishment.
27. The juvenile is a young person as per the Juveniles Act, he is of good character, isolated offences were committed by him, he was 16 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and he takes full responsibility of his actions. These special reasons render immediate imprisonment inappropriate.

28. The juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future, the juvenile has been in remand at the Fiji Juvenile and Rehabilitation Centre which is in itself an adequate and appropriate punishment, an experience that will remind him to keep away from trouble. This court has taken into account rehabilitation over and above deterrence.
29. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
30. The only reason why this punishment is below the tariff is because the Juveniles Act imposes a limit on the punishment for young persons.
31. In summary the juvenile is imposed a punishment of 1 year 4 months and 11 days imprisonment as an aggregate punishment for both the offences which is suspended for 3 years with immediate effect. The effect of the suspended sentence is explained to the juvenile.
32. The following orders are to take immediate effect:

- a) The juvenile is imposed a punishment of 1 year 4 months and 11 days imprisonment as an aggregate punishment for both the offences which is suspended for 3 years with immediate effect;
- b) The juvenile is to be placed under probation order with the Social Welfare Department for the next two years. The terms of the probation is to be worked out by the Social Welfare Department in consultation with the Probation Officers and the parents.
- c) Due to the closeness of the relationship between the juvenile and the victim a permanent non-molestation and non-contact orders are to be effected immediately;
- d) Both parents of the juvenile are to sign a good behaviour bond on behalf of the juvenile in the sum of \$500.00 each. The parents are also to pay a fine of \$120.00 within 14 days from today payable at the Magistrate's Court at Sigatoka if they are not able to come to the High Court at Lautoka;
- e) The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of his parents with the view to assisting him in keeping out of peer group influence;

- f) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;
- g) It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;
- h) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department, Sigatoka;
- i) 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

17 September, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Juvenile.