

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 169 of 2023

STATE

V

VM

Counsel : Mr. Laisiasa Baleilevuka for the State
Mr. Abishek Samy for the Juvenile

Punishment Hearing : 16 May 2024

Punishment : 20 June 2024

The name of the complainant and the Juvenile are suppressed. Accordingly, the complainant will be referred to as "BA" and the Juvenile will be referred to as "VM".

PUNISHMENT

[1] VM, as per the Amended Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

Count 1

Statement of Offence

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

Particulars of Offence

VM, on the 13th day of July 2021, at Rakiraki, in the Western Division, penetrated the vagina of BA, a child under the age of 13 years old, with his penis.

Count 2

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

VM, on the 13th day of July 2021, at Rakiraki, in the Western Division, unlawfully and indecently assaulted **BA**, by kissing her on the mouth.

Count 3

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

VM, on the 13th day of July 2021, at Rakiraki, in the Western Division, unlawfully and indecently assaulted **BA**, by touching her vulva with his hand.

- [2] This matter was first called before the High Court on 16 October 2023. The Disclosures relevant to the case were filed in Court on 13 December 2023 and served on the Counsel on behalf of the Juvenile. On 7 February 2024, the DPP filed the Information and the matter was adjourned for plea.
- [3] On 22 April 2024, the Information was amended. You were ready to take your plea on the said Amended Information. Accordingly, on that day you pleaded guilty to the three counts against you in the Amended Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your guilty plea.
- [4] On 7 May 2024, the State filed the Summary of Facts. On the same day, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Rape and two counts of Sexual Assault in the Amended Information, and found the counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea in respect of the count of Rape and two counts of Sexual Assault as charged.
- [5] I now proceed to impose the punishment against you.
- [6] The Summary of Facts filed by the State was as follows:

1.0 BRIEF BACKGROUND

- 1.1 *The complainant is BA, 3 years old at the material time, resides at Vunimakuciri, Bucalevu, Ra.*
- 1.2 *The Juvenile is VM, 14 years old, resides at Vunimakuciri, Bucalevu, Ra.*
- 1.3 *Relationship: The Juvenile is the complainant's uncle. The Juvenile's father and the complainant's grandfather are brothers. The Juvenile and the complainant's father are first cousins.*
- 1.4 *The Juvenile has entered an unequivocal guilty plea to one count of Rape contrary to Section 207 (1), (2) (a) and (3); and two counts of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act 2009.*

2.0 FACTS

PW1: BA, 3 years old, resides at Vunimakuciri, Bucalevu, Ra.

PW2: Adi Elenoa Likutabua, 23 years old, Police Officer.

PW3: Salesi Radei, 23 years old, resides at Nasaqa Settlement, Bucalevu.

A1: VM, 14 years old, resides at Vunimakuciri Settlement, Bucalevu.

- 2.1 *PW2 and PW3 are the parents of PW1 and they have a farm house that they usually go to, to spend time. On the 13th of July 2021, A1 accompanied PW1, PW2 and PW3 to their farm house.*
- 2.2 *At around 11.30 a.m. and against PW2's objections, A1 took PW1 to the river to catch fish and prawns.*
- 2.3 *To clarify, PW2 objected to A1 taking PW1 to the river as the weather was cold and she knew the river would also be cold.*
- 2.4 *When PW1 and A1 went to the river, PW1 was only wearing her pants and a pair of boots.*
- 2.5 *As they approached the river, A1 made PW1 lie down in a grassy area where he then kissed PW1 on the mouth.*
- 2.6 *After kissing PW1 on the mouth, A1 then removed PW1's pants and proceeded to lay on top of her stomach where he inserted his penis into PW1's vagina.*
- 2.7 *When A1 penetrated his penis into PW1's vagina, PW1 experienced back pain and also felt pain in her vagina and she attempted to stop A1, but A1 slapped both her hands away.*
- 2.8 *The pain made PW1 cry.*
- 2.9 *A1 also touched PW1's vulva with his hand.*
- 2.10 *After the ordeal, A1 made PW1 put her clothes back on before telling her to take the lead back home (to the farm house).*

- 2.11 *Back at the farm house, two young boys (Te and Poate) had also come to the farm for a visit.*
- 2.12 *Poate began playing with PW1 and while they played, PW2 saw PW1 slip and fall on a piece of corrugated iron.*
- 2.13 *When PW3 heard PW1 crying he came and carried PW1 into the house and both PW2 and PW3 noticed that PW1 was bleeding as there was blood on her clothes.*
- 2.14 *PW2 checked PW1's body and discovered that PW1 was actually bleeding from her vagina.*
- 2.15 *PW2 and PW3 gathered PW1 and took her to the hospital.*
- 2.16 *PW1 was seen by a doctor at the Nayavu Health Centre and the doctor transferred them to Korovou.*
- 2.17 *On their way from the farm to Nayavu Health Centre and all the way to Korovou Hospital, PW1 continued to bleed out of her vagina.*
- 2.18 *Whilst bathing PW1 at the Korovou Hospital, PW1 told PW2 that A1 had touched her vulva, kissed her mouth and inserted his penis into her vagina.*
- 2.19 *PW1 was admitted to the Korovou Hospital for 4 nights and was transferred to CWM Hospital when clots of blood were found in her diaper.*

3.0 MEDICAL REPORT

3.1 *The 'Genital Examination' notes:*

- *Bruising of the Labia Majora*
- *The Posterior Fourchette was lacerated*
- *Swelling of the clitoris*
- *Blood stains on her inner thighs*
- *Anus is normal with blood stains*

(Medical Report of BA dated 13th July 2021 is Attached and Marked as Annex "MR").

- [7] VM, you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [8] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[9] I have duly considered the above factors in determining the punishment to be imposed on you, which is primarily to punish and deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences and also to protect the community.

[10] Section 4(2) of the Sentencing and Penalties Act provides that a Court must also consider the following factors when sentencing an offender:

(2) In sentencing offenders a court must have regard to —

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

(c) the nature and gravity of the particular offence;

(d) the offender's culpability and degree of responsibility for the offence;

(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;

(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

(i) the offender's previous character;

(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.

[11] Furthermore, Section 4 (3) of the Sentencing and Penalties Act stipulates the factors that a Court must have regard to in sentencing offenders for a domestic violence offence.

“(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender’s —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.”

- [12] The offence of Rape in terms of Section 207(1) of the Crimes Act carries a maximum penalty of imprisonment for life.
- [13] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

"It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage."

- [14] In **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S; Pain J said:

"The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences."

- [15] In the case of **State v. Marawa** [2004] FJHC 338; HAC 16 of 2003S (23 April 2004); His Lordship Justice Gates stated:

"Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences".

*"A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public's disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: **Roberts and Roberts** (1982) 4 Cr. App R(S) 8; **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S."*

- [16] His Lordship Justice Daniel Goundar, in the case of **State v. AV** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

"...Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual

abuse. Sexual offenders must be deterred from committing this kind of offences”.

- [17] In the case of **State v. Tauvoli** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

- [18] In the case of **Felix Ram v. The State** [2015] FJSC 26; CAV 12 of 2015 (23 October 2015); His Lordship Chief Justice Anthony Gates laid down the following factors that a Court should take into account when sentencing an offender who has been convicted of Rape:

“(a) whether the crime had been planned, or whether it was incidental or opportunistic;

(b) whether there had been a breach of trust;

(c) whether committed alone;

(d) whether alcohol or drugs had been used to condition the victim;

(e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;

(f) whether the impact on the victim had been severe, traumatic, or continuing;

(g) whether actual violence had been inflicted;

(h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;

(i) whether the method of penetration was dangerous or especially abhorrent;

(j) whether there had been a forced entry to a residence where the victim was present;

(k) whether the incident was sustained over a long period such as several hours;

(l) whether the incident had been especially degrading or humiliating;

(m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;

(n) Time spent in custody on remand;

(o) Extent of remorse and an evaluation of its genuineness;

(p) If other counts or if serving another sentence, totality of appropriate sentence."

[19] His Lordship Justice Goundar in ***State v Apisai Takalaibau*** – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that "A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community."

[20] This has also been affirmed by the Supreme Court in ***Alfaaz v. State*** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held:

"According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders."

[21] In the case of ***Anand Abhay Raj v. The State*** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[22] However, in the case of ***Aitcheson v State*** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates (with Justice Saleem Marsoof and Madam Justice Chandra Ekanayake agreeing) stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*"The tariff previously set in ***Raj v The State*** [2014] FJSC 12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the*

aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms."

[23] In *Aitchison v State (Supra)*, it was said:

[72] Undoubtedly it has been accepted by the society that rape is the most serious sexual offence that could be committed on a woman. Further it is said that; "A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female."

[24] In determining the starting point within a tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."

[25] In terms of Section 2 of the Juveniles Act No. 13 of 1973 (Juveniles Act) (as amended) a "juvenile" has been defined to mean a person who has not attained the age of eighteen years, and includes a child and a young person. A "child" means a person who has not attained the age of fourteen years; while a "young person" means a person who has attained the age of fourteen years, but who has not attained the age of eighteen years.

[26] VM your date of birth is 5 April 2007. At the time of the offending, you were 14 years of age, and as such a "young person".

[27] Section 20 of the Juveniles Act provides: *The words "conviction" and "sentence" shall not be used in relation to juveniles and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of juvenile persons, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.*

[28] Section 30 of the Juveniles Act imposes certain restrictions on the punishments which Courts could order against juvenile offenders. The Section provides that:

"(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."

Emphasis is mine.

[29] VM, the aggravating factors are as follows:

- (i) Breach of trust. You are related to the complainant. You are her uncle. You and the complainant's father are first cousins. Being so, you should have protected the complainant. Instead you have breached the trust expected from you and the breach was gross.
- (ii) There was a disparity in age between you and the complainant. At the time of the incident the complainant was only 3 years of age. At the time you were 14 years of age. Therefore, you were over 10 years older than the complainant at the time of the offending or more than four times older than her.
- (iii) You took advantage of the complainant's vulnerability, helplessness and naivety and thereby paid no regard to her personal security or privacy.
- (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the complainant of her innocence.
- (v) Serious injuries had been caused to the complainant's genital area as a result of your actions. This is confirmed as per the findings in the Medical Examination Report of the complainant.
- (vi) The frequent prevalence of the offence of Rape in our society today, especially cases of child Rape.
- (vii) You are now convicted of multiple offending.

[30] In mitigation you have submitted as follows:

- (i) That you are a first offender and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.

- (iii) You have submitted that you are truly remorseful of your actions and assured Court that you will not re-offend. You say you are willing to reform and promise to lead a crime free life in the future.
- (iv) It is submitted that you have sought forgiveness from the complainant and her family in the traditional manner and that they have accepted your offer of forgiveness.
- (v) That you entered a guilty plea at the first available opportunity in this case.

[31] Accordingly, considering the objective seriousness of the offence and the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating factors, and the restrictions placed on this Court in terms of the provisions of Section 30(3) of the Juveniles Act, VM I impose on you a punishment of 2 years imprisonment for the count of Rape.

[32] I will now deal with the offence of Sexual Assault (Counts 2 and 3). The offence of Sexual Assault in terms of Section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[33] In the cases of *State v. Abdul Khaiyum* [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012); and *State v. Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.

[34] It was held in *State v. Laca* (supra) "The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks."

"A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim.

Category 2

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;

- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)."

[35] In this case, as per Count 2, it has been proved that you unlawfully and indecently assaulted the complainant BA, by kissing her on the mouth. Therefore, in my opinion, the offence in Count 2 should be categorized under Category 3 above. As per Count 3, it has been proved that you unlawfully and indecently assaulted the complainant BA, by touching her vulva with your hand. Therefore, in my opinion, the offence in Count 3 should be categorized under Category 2 (ii) above.

[36] Accordingly, considering the objective seriousness of the offence and the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating factors aforesaid, and the restrictions placed on this Court in terms of the provisions of Section 30(3) of the Juveniles Act, VM, I impose on you a punishment of 6 months imprisonment for the second count of Sexual Assault; and 1 year imprisonment for the third count of Sexual Assault.

[37] In the circumstances, your punishments are as follows:

Count 1- Rape contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act – 2 years imprisonment.

Count 2- Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act – 6 months imprisonment.

Count 3- Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act - 1 years imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 2 years.

[38] The next issue for consideration is whether your punishments should be suspended.

[39] Section 26 of the Sentencing and Penalties Act provides as follows:

- (1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part*

of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

(2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

- [40] VM you are now 17 years of age [Your date of birth being 5 April 2007]. At the time of the offending, you were 14 years of age. It is stated that you are coming from a broken family. When you were 4 years old, your parents had got separated and that you were raised by another Rotuman family for some time. Thereafter, you were brought back to your father. Your father is said to have passed away some time in 2022. You have 7 siblings and you are the third youngest in your family.
- [41] You are currently residing with your cousin sister Emily Radinivora at Bucalevu Village in Rakiraki. A character reference letter has been submitted to this Court by the Turaga ni Koro of Bucalevu Village, Nakuwailava, Ra, highlighting your personal background and family status.
- [42] You are said to be a Year 10B student at Ra High School and you are also said to be undergoing counselling sessions at the school. A character reference letter has been submitted to this Court by Miliame Tamanisau, Vice Principal/School Counsellor of the Ra High School, describing your character and your behaviour.
- [43] You have submitted that your ambition is to become a Navy Officer in Fiji and support your family.
- [44] Furthermore, every Sunday you are said to be attending Bureloa Methodist Church and you are part of the Sunday school. You are said to have committed yourself to the spiritual development in your community. A character reference letter has been submitted to this Court by Pastor Osea Dau of the Bureloa Methodist Church highlighting your character and your dedication and commitment towards the betterment of your family.
- [45] You have submitted that you are truly remorseful of your actions and that you are repenting every day for the mistake that you have made.
- [46] VM you were arrested for this matter on 22 July 2021 and caution interviewed and released the same day. On 26 September 2023, you were produced in the Magistrates'

Court of Rakiraki. You were granted bail on the same day. Therefore, you have not been in remand custody for this case a single day.

[47] A Pre Punishment Report has been submitted by Mr Napolioni Wara, Community Based Correction Officer, Department of Social Welfare, Lautoka Office, confirming the factors you have highlighted in mitigation.

[48] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence."

[49] In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:

"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."

[50] VM, I concede that you are a young juvenile offender, that you have been of previous good character, that you have fully co-operated with the Police in this matter, that you have accepted responsibility for your conduct, that you are truly remorseful of your actions and have apologized for same, that you have assured Court that you will not re-offend and are willing to reform and that you entered a guilty plea at the first given opportunity during these proceedings.

[51] However, considering the seriousness of the offending, the nature and the gravity of the offending and your culpability and degree of responsibility for the offending, the fact that the complainant was merely 3 years old at the time of the offending and that she had sustained serious injuries due to the offending, I am not inclined to suspend the entirety of your punishment. I am of the opinion that a partial custodial punishment is appropriate in the given circumstances so as to deter you and other like persons from committing such criminal acts.

[52] Accordingly, I order that you should serve in custody 1 year of the 2 years term of imprisonment this Court is imposing on you. The balance 1 year would be suspended for a period of 5 years. You are advised of the effect of breaching a suspended punishment.

[53] I order that the 1 year term of imprisonment will be served at the Juvenile Boys Rehabilitation Centre in Suva.

[54] You have 30 days to appeal to the Court of Appeal if you so wish.



Riyaz Hamza
Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 20th Day of June 2024

Solicitors for the State:
Solicitors for the Juvenile:

Office of the Director of Public Prosecutions, Lautoka.
Office of the Legal Aid Commission, Lautoka.