

IN THE HIGH COURT AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 70 of 2024

The State –vs- S.E.T.

For the State: Ms. K. Dugan
For the Juvenile: Ms. A. Chandra

Date of Plea: 15th August 2024
Date of Finding of Guilt: 6th September 2024
Date of Punishment: 26th September 2024

The name of the complainant and the Juvenile are suppressed. Accordingly, the complainant will be referred to as “SFT” and the Juvenile will be referred to as “S.E.T.”

PUNISHMENT

1. The Juvenile S.E.T. is charged with the following offences on the Information filed on the 22nd of May 2024:

INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS

S.E.T.: is charged with the following offence:

Count 1

[Representative Count]

Statement of Offence

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

Particulars of Offence

S.E.T. on unknown dates between 1st January 2023 and the 3rd day of November 2023 at Viwawa, Navua in the Central Division, unlawfully and indecently assaulted **SFT** by touching her breasts and her body.

Count 2

[Representative Count]

Statement of Offence

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

Particulars of Offence

S.E.T. on unknown dates between 1st day of January 2023 and the 3rd day of November 2023 at Viwawa, Navua in the Central Division, penetrated the vagina of **SFT**, a child under the age of 13 years, with his penis.

Count 3

[Representative Count]

Statement of Offence

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

Particulars of Offence

S.E.T. on unknown dates between 1st day of January 2023 and the 3rd day of November 2023 at Viwawa, Navua in the Central Division, penetrated the vagina of **SFT** a child under the age of 13 years, with his finger.

2. The Juvenile was first produced in the Navua Magistrate's Court on the 15th of February 2024 and the matter was then transferred up to the High Court.
3. He was first arraigned in the High Court on the 6th of March 2024 and he was bailed on the 7th of March 2024.
4. After the Information and Disclosures were filed and served, the prosecution requested that the Juvenile be psychiatrically evaluated to determine if he was capable of mounting a defence and participating in his Trial.
5. The Report dated 15th July 2024 made the following conclusions:
6. Conclusions of the Psychiatric Evaluation Report

The following conclusions are based on the history, information available, current observations made, current examination and interviews and assessment of his mental status. Considering all above the opinion made is at the time of the examinations.

- (a) S.E.T. was aware of his actions at the time of alleged criminal offence.
- (b) He is fit to plea.
- (c) He is fit to stand trial.

7. The Juvenile then took the plea on the 15th of August 2024. He has pleaded guilty to all three counts and on the 6th of September 2024, the following Summary of Facts was put to him.

8. Summary of Facts

- (i) The complainant's name is FST, 6 years of age at the time of the offence, iTaukei and she currently resides around Navua.
- (ii) The Juvenile's name is S.E.T., 17 years of age at the time of the offending and he also resides around Navua.
- (iii) The Juvenile and the complainant share a domestic relationship as the Juvenile is the complainant's half-brother.
- (iv) On September 5th 2023, the Juvenile S.E.T. was at home with the complainant FST at their residence.
- (v) On that day, there was no one else at home so the Juvenile closed all of the windows and doors of the house.
- (vi) The Juvenile then instructed the complainant to lie down on the mat on the floor.
- (vii) As she lay on the mat on the floor, the Juvenile proceeded to touch her chest, stomach and vagina both on top of, and under her clothes. The Juvenile then removed the complainant's pants and panty, exposing her lower body.
- (viii) The Juvenile then inserted his fingers into the complainant's vagina without her consent, causing her pain and distress.
- (ix) The Juvenile pulled the complainant's hand for her to touch his penis. At that time the Juvenile was on his knees and his trousers were down to his knees.
- (x) On the 10th of October 2023 the complainant was taking a shower, the Juvenile entered the bathroom without permission, saw the complainant naked, and ordered her to stand on top of a bucket of clothes.
- (xi) The Juvenile separated the complainant's legs and proceeded to penetrate her vagina with his penis. As a result of the Juvenile's action, the complainant felt intense pain and distress.

- (xii) The Juvenile's actions were found by the neighbours to be suspicious and after they asked the complainant what he did to her, she then told them what he did to her.
- (xiii) The matter was then reported to the Police and the Juvenile was arrested and interviewed under caution. He has made a full admission to all of the allegations made against him and he has now pleaded guilty to all three counts in the Information.

9. The Juvenile has admitted the Summary of Facts. I am satisfied that the Summary of Facts contains all of the elements of the three counts and I am also satisfied that the plea is unequivocal. I therefore find that S.E.T. is guilty as charged on all three counts on the Information.

10. The Juvenile has no previous convictions and counsel has filed the following plea in mitigation:

11. Plea in Mitigation

- (i) The Juvenile has been found guilty of one count of Sexual Assault and 2 counts of Rape.
- (ii) He is now 18 years of age, his date of birth is 4th November 2006.
- (iii) His father is a subsistence farmer and he supports the family, including the Juvenile.
- (iv) He has 5 siblings and he is the third oldest amongst the siblings.
- (v) He is unemployed, however he helps his family by fishing and farming.
- (vi) He is single and he has no children.
- (vii) He is a first time offender and he has delayed developmental milestones from a young age as reflected in the psychiatric evaluation report. He has a history of learning disabilities and due to a low level of education his intellectual functioning appears to be impaired. He admits that what he did is wrong and he is genuinely remorseful for his actions.

- (viii) He cooperated with the Police and fully admitted to his unlawful actions and this cooperation has culminated in in his guilty plea in Court.
- (ix) The Juvenile was arrested on the 14th of February 2024 and he was remanded till 6th March 2024, a period of 20 days. Counsel submits that this period should be deducted as time already served.
- (x) The maximum sanction for the offence of Rape is life imprisonment and the tariff for child rape was set by the Supreme Court in Aitcheson vs State [2018] FJSC 29; CAV 12 of 2018 (2nd November 2018). The tariff now ranges from 11 to 20 years imprisonment.
- (xi) The maximum sanction for the offence of Sexual Assault is 10 years imprisonment.
- (xii) In the case of 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.
- (xiii) 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).”

- (xiv) Counsel asks for a non-custodial sentence in order to allow him the opportunity to rehabilitate himself in the community. Counsel submits that the one transaction sentencing principle should be applied in the punishment handed out.
- (xv) Counsel further submits that the Court ought to consider leniency as he is remorseful and he cooperated with the police during their investigations, culminating in his guilty plea.

12. The State has also filed recommendations for the appropriate punishment to be levied.

13. Punishment Recommendations

- (i) The maximum penalty for Sexual Assault is 10 years imprisonment.
- (ii) The maximum penalty for the offence of Rape is life imprisonment.
- (iii) The tariff for Sexual Assault is 2-8 years imprisonment as set out in the case of State vs Epeli Ratabacaca Laca [2012] FJHC 252.
- (iv) The tariff for the rape of children is 11 -20 years as set out by the Supreme Court in Aitcheson vs State.
- (v) The Courts have consistently called for harsher punishment for offences against children, as it is serious and prevalent in Fiji.
- (vi) The State cites the case of Ram vs State [2015] FJSC 26; CAV 12 of 2015 (23rd October 2015) where the Court has set out the following factors to be considered in sentencing for child rape

“Factors to be considered in such cases could be:

- (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 especially vulnerable as a child;
 - (f) whether the impact on the victim had been severe, traumatic, or continuing;
- (vii) the State submits the following as aggravating factors in this case: -
- (a) The vulnerability of the complainant, she was 6 years old at the time of the offending and the Juvenile is her older brother.
 - (b) The Juvenile exposed the complainant to sexual activity at a young age, and he has effectively robbed her of her innocence.
 - (c) There is a severe breach of trust in this case. The Juvenile was expected to protect the complainant as an older brother and instead he has offended against her.
- (viii) The Juvenile has been remanded for 24 days therefore this period in remand shall be deducted as time already served by him.
- (ix) The State therefore proposes a punishment that must take into account the sentencing guidelines around section 4 of the Sentencing and Penalties Act and the Court must impose a punishment that reflects the gravity of the offending, and which sends a strong message to other would-be offenders.

Analysis

14. Sexual Assault attracts a maximum sentence of 10 years imprisonment and the tariff, as agreed by both the State and counsel for the Accused, ranges from 2 to 8 years imprisonment (State vs Epeli Ratabacaca Laca [2012] FJHC 645; HAC 35 of 2022 (14th October 2022)).
15. Rape attracts a maximum sentence of life imprisonment and the tariff for child rape, as in this case, ranges from 11 years to 20 years (Aitcheson vs State {2018} FJSC 29; CAV 12 of 2018 (2nd November 2018)).
16. The offence of Rape is the most serious sexual offence in the Crimes Act and it attracts the most serious punishment, Parliament has signalled very clearly for it to be treated seriously

and the Courts have now reinforced that message by confirming that the rape of children under 18 must attract a more severe sanction than for the rape of adult victims.

17. As this offending occurred in a domestic setting and the Juvenile is in a domestic relationship with the complainant, I am also required to consider the provisions of section 4 (3) of the Sentencing and Penalties Act, which provides: -

“4 (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.”

18. Section 30 (3) of the Juveniles Act 1973 mandates that any term of imprisonment imposed on a Juvenile shall not exceed 2 years.
19. These offences were committed as part of one transaction therefore I will apply section 17 of the Sentencing and Penalties Act 2009 and impose an aggregate punishment on the Juvenile, for all three counts.
20. The personal culpability of the Juvenile in this case is high.
21. The following factors aggravate the offending: -
 - (a) The breach of trust – the Juvenile is the elder half-brother of the complainant and he was trusted to look after her in their parents’ absence, and he used these opportunities to commit these offences.
 - (b) Exposing the young complainant to sexual activities at a very tender age.
22. The only mitigating factors in his favour are his guilty plea and his previous good conduct as a first offender.
23. The time spent in remand is rounded off to one month to be considered time already served.
24. In preparing the punishment, the Court will balance the need between punishing the offending and sending a deterrent message both specific and general, while at the same time having regard to offering the Juvenile an opportunity to rehabilitate himself.

Punishment Remarks

25. S.E.T you have been found guilty of one count of Sexual Assault and two counts of Rape (digital and penile rape.)
26. These offences were committed against your younger half-sister and the psychiatric evaluation has revealed that you were aware of your actions at the time of the offending and your subsequent actions since the offending have confirmed this.


27. You admitted what you did to the Police during the investigations and you maintained this stance right up to your arraignment in Court culminating in your guilty plea.
28. In preparing the aggregate punishment, I will consider whether to suspend the term of imprisonment or not.
29. In deciding whether or not to suspend the term of imprisonment I will consider the circumstances of the offending – a domestic violence offence where you as an elder sibling, have breached the trust reposed in you, and instead of protecting her you assaulted her sexually and then raped her twice.
30. After considering the above and the mitigating and aggravating factors, I find that it is not appropriate to suspend the term of imprisonment.

S.E.T. this is your punishment in this Matter

1. **For one count of Sexual Assault and 2 counts of Rape and I impose an aggregate punishment of 1 year 11 months imprisonment.**
2. **You will serve a term of 5 months before you are eligible for parole or any other form of early release.**
3. **The interim Domestic Violence Restraining Order is hereby made a final order of the Court for the protection of the complainant.**

30 days to appeal





Mr. Justice U. Ratuveli
Puisne Judge

- cc:**
1. ***Office of the Director of Public Prosecutions***
 2. ***Legal Aid Commission***