

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 236 of 2024

BETWEEN : STATE

AND : DEVEKUTA LEDUA VERERUA

Counsel : Ms K Dugan for the State
: Ms M Singh for the Accused

Hearing : 21 January 2025

Sentence : 18 February 2025

SENTENCE

(the name of the victim is suppressed and she is refer to as 'LD')

- [1] Devekuta Ledua Vererua, you appear today for sentence.
- [2] You are charged with one count of rape in that at some point in time in the year 2021, you penetrated the vagina of LD, a child under the age of 13 years, with your penis. You have pleaded guilty to the offence. I am satisfied that you pleaded guilty of your own free will, understanding fully the charge against you and the consequences of the plea.
- [3] A summary of facts has been provided by the prosecution. You have accepted the summary as correct. According to the summary of facts, you were 16 years old at the time of the offending. The victim was 11 years old. You are cousins. On the day of the offending, you and the victim, along with other relatives, slept over at your grandparent's house. The victim was asleep in the living room when she felt someone lying behind her. That person was you. You touched her breast, then rubbed your erect

penis onto LD's backside and proceeded to penetrate her vagina until LD told you to stop.

- [4] The offending did not come to the attention of the police until March 2024. You were arrested on 10 September 2024. In your interview with the police on 11 September 2024, you admitted the offence. The medical examination of the victim at that time confirmed that her hymen was not intact.
- [5] I have read the record of your interview with the police. You indicated that you believed that the victim was consenting to the penetration of her vagina. Indeed, at the sentencing hearing, after the summary of facts was read, you stated that you did not dispute the facts but you believed that the victim had consented. As I informed you at the time, your young cousin, who was only a child when you penetrated her vagina, was not capable in law of consenting to the penetration.
- [6] I have considered the facts as admitted by you. I am satisfied that the elements of the offence of rape under section 207(1) and (2)(a) and (3) are established and, accordingly, I accept your plea of guilty and convict you.
- [7] Your lawyer has offered the following mitigation on your behalf:
- You are currently 19 years old and you were only 16 years at the time of the offending. Thus, you were a juvenile.
 - You are single and seeking to commence vocational studies.
 - You pleaded guilty at the first opportunity and have fully cooperated with the police.
 - You are a first offender and remorseful for your actions.

[8] Your lawyer seeks a suspended prison sentence for you, so as to provide you with every opportunity to rehabilitate.

[9] The maximum penalty for rape is life imprisonment. The usual tariff for the rape of a child is between 11 and 20 years imprisonment. However, as you were 16 years old at the time of your offending, you must be treated as a juvenile for the purposes of your sentence. Pursuant to section 30(3) of the Juveniles Act 1973, the maximum punishment for a young person (being a person between the age of 14 and 18 years) is no more than two years imprisonment. In line with the definitions under the Juveniles Act, you were a 'young person' at the time of your offending.

[10] Before I consider your sentence, it is appropriate to emphasize the following comments by the High Court in *State v Tauvoli* [2011] FJHC 216 (18 April 2011) at [5]:

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.

[11] In assessing the seriousness of your offending in this matter, I have considered the maximum sentence prescribed for the offence together with the maximum permitted under the Juveniles Act, the degree of culpability, the manner in which you committed the offence and the harm caused to LD. I give due consideration to the sentencing guidelines stipulated at section 4 of the Sentencing and Penalties Act 2009. The aggravating factors present in your case are as follows:

- A breach of trust. You are LD's older cousin and she would have looked to you for protection. You betrayed that trust.
- An age disparity of 5 years, which is a significant gap given both your ages at the time.
- LD was only 11 years old and still a child at the time of your offending. The consequences on her will be long term. In LD's statement provided for sentencing she has stated that her schooling has been impacted by your offending and that she now prefers to stay away from home (a place that a young person should feel safe) because it reminds her of what you did to her. She describes herself as a decent child before the rape and that she has since fallen from that path because of the rape. Of concern is that LD states that she is being blamed by her family for your offending.

[12] With respect to your mitigating factors, you are young, a first offender, and you pleaded guilty at the first opportunity as well as cooperated with the police. I do, however, have some difficulty with the suggestion that you are remorseful for your actions. You sought at the sentencing hearing to shift responsibility to the victim by suggesting that she consented to the rape.

[13] Having regard to all of these matters, including the aggravating and mitigating factors, I am of the view that the appropriate sentence for you is 18 months imprisonment.

[14] Pursuant to section 24 of the Sentencing and Penalties Act, the period that you spend in remand awaiting sentence shall be considered as time already served unless I consider otherwise. You have already spent about five months on remand since your arrest.¹ I make a deduction for time already spent on remand resulting in a sentence of 13 months imprisonment.

¹ From 10/9/24 to 13/12/24 and from 19/12/24 to today.

[15] I now turn to consider whether this is a suitable case to impose a suspended sentence. This court has power to make an order suspending your sentence where it does not exceed three years. Your lawyer submits that you should have a suspended sentence because of your age at the time of your offending. Your lawyer relies on several decisions of the High Court where it imposed a suspended sentence. I have read these decisions. I have also read the decisions provided by the prosecution, some of which the High Court either imposed a partial suspended sentence² or did not suspend the sentence at all for the juvenile offender³.

[16] Goundar J confirmed that the following principles are still applicable when considering whether to suspend a custodial sentence:⁴

[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

² *State v VM* [2024] FJHC 389 (20 June 2024).

³ *State v SET* [2024] FJHC 600 (26 September 2024).

⁴ *State v Sorovanalagi* [2012] FJHC 1135 (31 May 2012).

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.”⁵

[17] I am mindful of the importance of providing juvenile offenders with every opportunity to rehabilitate and thus avoid custodial sentences, particularly where the juvenile is a first-time offender. Balanced against that, however, is the gravity of the offending and the Court’s responsibility to protect our most vulnerable members of the community from all sexual offenders, adult or juvenile. The following comments by then Temo J (now Chief Justice) in *State v AT* [2011] FJHC 360 (14 June 2011) merit restating, ‘order has to be established in the juvenile world. Young persons who are approaching adulthood, (i.e. 18 years old) should not be allowed to exploit the vulnerable in the juvenile world’.⁶

[18] Having carefully considered the matter, I am not satisfied that your circumstances justify suspending your entire sentence. The disparity between your age and LD’s age is in my view too great. Whilst you were a young person at 16 years of age you should have known better. You took advantage of your cousin who was a mere child at the time of the sexual offending. The Court has a duty to protect children from sexual offenders of all ages. In the circumstances, I am satisfied that the appropriate sentence is a partially suspended sentence to take account of your circumstances as well as the seriousness of your offending.

⁵ My emphasis.


⁶ At paragraph 11.

[19] Mr Vererua, would you please stand.

[20] I make the following orders:

- i. You are sentenced to a period of 13 months imprisonment. You are to serve 5 months of your sentence, forthwith. The remaining 8 months are suspended for 3 years. What this means is that if you commit any crime punishable by imprisonment during the suspended operational period of 3 years and you are found guilty of the crime by a court then you are liable to be charged and prosecuted for an offence. If this happens your sentence of 8 months will be restored.
- ii. The victim, LD, will have permanent name suppression.
- iii. I issue a permanent Domestic Violence Restraining Order against you to protect LD. The order is for a standard non molestation and non-contact conditions pursuant to ss 27 and 29(1), (2)(a),(b) & (e) of the Domestic Violence Act 2009.
- iv. You have 30 days to appeal to the Court of Appeal.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused