

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 119 - 2014

STATE

-v-

MIKAELE VAUVAU

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms Henao G. [Legal Aid Commission]
Date of Trial : 3rd May 2019
Date of Judgment : 4th June 2019
Date of Sentence : 17th March 2020

SENTENCE

1. **MIKAELE VAUVAU** since you pleaded not guilty, a trial was held in-order to determine your guilt. After considering the evidence and the law, I was satisfied beyond a reasonable doubt that you committed the offence and I have convicted you of the following:

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 of the **Crimes Act 2009**.

Particulars of Offence

MIKAELE VAUVAU on the 1st day of November, 2013 at Tavua town in the Western Division unlawfully and indecently assaulted **EAS**.

2. The female victim was around 6 years old at the time. The parties are not related and I am satisfied that no domestic relationship in existence. However, the victim has seen the defendant before in the village. On the day in question, the victim was in town and was sent by her mother to get something from a shop. The defendant was seated on a public bench at the time in town. It was in the morning. Town was full

and there were a lot of people around. The defendant called the victim twice and the victim came and sat beside the defendant. The defendant then put his arm around her and slid his hand down her tights or pants. The defendant's hand was around her abdomen area. The act and motive was sexual in nature. The victim was afraid and ran to her mother who was at the market and told her mother what happened. The offence or act by the defendant could have been more aggravated if the victim stayed or remained with the defendant. Police were notified and the defendant was arrested on the same day.

3. It is unclear to me after having perused the record, as to the reason(s) why the defendant was remanded in 2018 and for how long? Counsel for the defendant advise me that the defendant was remanded for 5 months. I will give the benefit to the defendant and I will deduct this 5 months from the defendant's sentence.
4. The defendant is not a first offender. The defendant was convicted in May 2010 for indecent assault. The facts of that case are disturbing. The defendant pleaded guilty in that case and was sentenced to a 2 year and 4 month imprisonment term for using his finger to poke the 9 year old victim's vagina. The defendant is a neighbour and had called the victim into the house and gave the victim \$2. He fondled the victim causing bruising to the vaginal walls of the victim.
5. The defendant is 59 years old. He is single and unemployed. It is submitted that he suffers from diabetes, high blood pressure and chest pains. He seeks leniency and another chance.

MAXIMUM SENTENCE

6. For indecent assault, the maximum punishment that is imposable is up to 5 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

7. The sentencing tariff sentencing tariff for indecent assault is between 12 months to 4 years imprisonment [**Rokota v The State** [2002] FJHC 168; HAA0068J.2002S (23 August 2002)].

Starting Point

8. Considering the objective seriousness of the offence, I select 14 months imprisonment as the starting point.

Aggravating Factors

9. The female victim was 6 years old at the time.
10. Although there is no close or family relationship here, the victim trusted the defendant as she has seen him before and a reason why she went to the defendant when he called her.
11. The offence was committed in public. It was brazen and defiant.
12. I increase the defendant's sentence to 24 months imprisonment.

Mitigating Factors

13. I do not find any compelling mitigating factor in your favour.
14. I am not persuaded that you have any serious health condition and your age is not necessarily a mitigating factor. It could even be an aggravating factor because younger persons such as the victim look up to you.
15. Your sentence remains at 24 months imprisonment.

DISCRETION and OBJECTIVE IN YOUR SENTENCE

16. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** if your sentence does not exceed 24 months imprisonment.
17. I also have the discretion to impose a non-parole period pursuant to section 18 (1) and (2) of the **Sentencing and Penalties Act 2009**.
18. I am also mindful of section 4 of the **Sentencing and Penalties Act 2009** when considering your sentence in this case.

19. I place emphasis on the community's denunciation of this type of offending and the need for deterrence when sentencing you.

SUMMARY

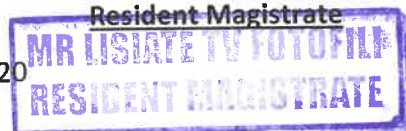
20. You are sentenced to 24 months imprisonment [head sentence].
21. I will deduct the 5 months you have spent in remand from your head sentence.
22. You have 19 months imprisonment remaining.
23. I refuse to suspend your imprisonment term either in part or in whole.
24. You have been convicted before for the same offence and considering the nature of the offence committed by you on the 6 year old female victim in this case, I am satisfied that a non-parole period is necessitated.
25. Out of your remaining 19 months imprisonment, you will serve a non-parole period of 13 months imprisonment.
26. Since I am satisfied that there is no domestic relationship in existence between the defendant and the victim in this case, I cancel the interim domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to the defendant on the 20th of August 2018.
27. I warn the defendant that if he reappears for another case of a sexual nature, particularly involving a minor, and if he is found guilty, his case may be transferred to the High Court in-order that he be sentenced as a habitual offender.
28. The defendant is to serve his sentence immediately.

28 days to appeal.



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Lisiate T.V. Fotofili

Resident Magistrate



Dated at Tavua this 17th day of March, 2020