

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 10 of 2014

BETWEEN:

THE STATE

AND:

JESE KALOUNIVALU

Counsel: Mr. M. Delaney for State
Mr. M. Fesaitu for Accused

Date of Hearing: 19-20 & 22-23 December 2014

Date of Sentence: 24 December 2014

SENTENCE

- [1] Jese Kalounivalu, you stand convicted of defilement of a girl between the ages of 13 and 16 contrary to section 215 (1) of the Crimes Decree. The maximum penalty for this offence is 10 years' imprisonment.
- [2] Initially you were charged with two counts of rape. Before the trial commenced, you offered to plead not guilty of rape but guilty of defilement on count 1. The offer of plea to the alternative offence was not accepted by the State. The trial commenced.

- [3] You did not dispute the contents of your caution interview, in which you admitted having consensual sexual intercourse with the complainant three times in May 2013 knowing she was under the age of 16 years. In fact you knew the complainant was 14 years old but because she consented, you thought it was alright to have sex with her. Consent is not a defence to a charge of defilement.
- [4] With the leave of the Court and without any objection from the defence, the State amended the Information by adding a third representative count of defilement before the close of the prosecution case. This amendment was based on your admissions that you had sexual intercourse with the complainant three times in May 2013. When you were re-arraigned, you pleaded guilty to the third representative count of defilement. For the purpose of sentencing, I take into account that you defiled the complainant once in May 2013 despite your admissions that you defiled her three times.
- [5] I do not hold against you that you exercised your right to a trial. I treat your convictions for defilement as if you had pleaded guilty before the commencement of trial. The State was entitled to present its case. After due process, you were convicted of an offence which you maintained to have committed when you were arrested and interviewed under caution.
- [6] Your admissions and your willingness to plead guilty to defilement indicate that you took some responsibility for your conduct. At the time of the offending, you were 18 years old. Not only you are a young offender, you are also a first time offender. I consider these as the mitigating factors.
- [7] The tariff for defilement is between suspended sentences to 4 years imprisonment (*Elia Donumainasava v State* [2001] HAA 32/01S, 18 May 2001). In *State v Pita Vetaukula* Criminal Case No. HAC 46 of 2013 (8 July 2014), this Court stated that suspended sentences are appropriate in cases of non-exploitive relationship between persons of similar age, while custodial sentences are appropriate in cases of sexual exploitation of younger girls by older men or men who hold position of authority over the girls.
- [8] In *Vetaukula* (supra), the offender was sentenced to 18 months' imprisonment after he pleaded guilty to a charge of defilement. The offender was the headman of the village. He was 22 years old when he defiled a 15 year old girl from his village. In sentencing the offender the court said:

The courts have a duty to protect the young girls from any form of sexual exploitation. In cases of sexual exploitation of young girls, the primary purpose of the sentence is general deterrence. Rehabilitation of the offender is a secondary purpose.

- [9] In the present case, the complainant was a much younger person when you defiled her. She was only 14 years old and a school girl. You considered her as your cousin in the village setting. There is some degree of exploitation of the complainant. You were not in a sincere relationship with her. You only used her for sexual gratification, suggesting her character was blemished. Given these aggravating factors, the purposes of sentence that apply to you is denunciation and deterrence, both special and general.
- [10] I use 2 years as my starting point and increase your sentence to 3 years to reflect the aggravating factors. I reduce your sentence by 14 months to reflect your mitigating factors and I make a further reduction of 10 months to reflect your remand period.
- [11] On each count of defilement, I sentence you to 12 months' imprisonment, to be served concurrently. In all circumstances of the case, suspension is not appropriate. The total sentence for two counts of defilement is 12 months' imprisonment effective from today.



Daniel Goundar

JUDGE



At Labasa

24 December 2014

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused