

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION.

Criminal Miscellaneous Case HAM No. 203 of 2014.

BETWEEN:

EREMASI RINASAU

AND:

STATE

Counsel: Applicant in Person
Ms. M. Khan for the State.

Date of hearing: 8 May and 4 June, 2015

Date of Judgment: 13 July 2015.

JUDGMENT

The appellant was convicted in the Magistrates' Court at Nasinu on the 29th April 2014 of one count of abduction of a person under 18 years of age with intent to have carnal knowledge, contrary to s.211(1) of the Crimes Decree 2009 and a second count of defilement of young person between 13 and 16 years of age contrary to s.215 of the Crimes Decree 2009. He was sentenced on 21 May 2014 to 18 months for the abduction and 3 years and 10 months for the defilement. Both sentences concurrent and concurrent to lesser sentences in other cases sentenced at the same time.

2. The appellant appeals both his conviction and sentence.
3. Against conviction, the appellant submits that his plea of guilty was equivocal. He says that he was under threat from the victim's family and relatives who were always in Court whenever he appeared. As a result he felt pressured to enter a plea and the Magistrate made no enquiry of him as to whether he understood the consequences of his plea.
4. In his appeal against sentence, he argues that he was not afforded enough credit for his good character and in addition she had made all the adjustments for mitigation and aggravation to one charge (the defilement) but not to the abduction.
5. The appellant had been sentenced in the Nasinu Magistrates' Court on the same day for these two offences as well as four other totally unrelated offences. The Magistrate in dealing with these 2 particular offences took the defilement as the "major" offence (because it has a higher penalty) and used this offence to make her adjustments for aggravation and mitigation. The sentence for the abduction was much less and she made this to be served concurrently with the defilement offence. In doing this it was quite unnecessary for her to again adjust the abduction sentence.
6. The appellant was aged 23 at the time and the victim 15 years old. The facts admitted were that in the month of November 2012 he took the girl from her home without the consent of her parents, he kept her as a defacto wife and had sexual intercourse with her.

7. In her sentence the Magistrate took a starting point of 5 years which she increased by 12 months for the aggravating features of age difference and being married already. She deducted 6 months for the mitigation of his being a first offender and remorseful. She took a further 20 months off for his plea of guilty arriving at a final sentence of 3 years and 10 months.
8. For the abduction charge she took a starting point of 18 months, adding neither aggravating nor mitigating elements and she ordered this 18 month sentence to run concurrently with the defilement sentence.

Analysis

9. The appellant is correct when he says that a plea of guilty from an unrepresented accused should be carefully examined. If there is any suggestion that it be equivocal then it is for the Court to reverse it and enter a plea of not guilty.

As the Court of Appeal said in Michael Iro v. R. [1966] 12 FLR 104:

"In our view there is a duty cast on the trial Judge when the accused is unrepresented to exercise the greatest vigilance with the object of ensuring that before a plea of guilty is accepted, the accused person should fully comprehend exactly what that plea of guilty involves".

10. Quite clearly the Magistrate failed to enquire as to the commitment of the accused in this case as she should have, but I find however that the plea was not equivocal. There is nothing displayed in the record that would suggest that the accused was conducting himself unwillingly in

the proceedings, he went ahead to agree facts and he submitted his own mitigation, asking for forgiveness. His detailed submissions to the Court relating to the appeal against conviction says he was forced to plea through threat, oppression and inducement; three very different factors which could not all operate together. His submissions are suggestions of "text book defences" dictated by someone else.

11. I don't believe his plea was equivocal and as a result the appeal against conviction is dismissed.
12. The Magistrate in sentencing three different cases together, each of those cases with more than one charge, has produced a very "messy" sentence which jumps from one case to another and is difficult to separate the remarks pertaining to this case alone.
13. The tariff for defilement of a girl between 13 and 16 years of age is a sentence ranging from suspended sentence for protagonists in a "virtuous relationship" to four years imprisonment with the higher end of the range being for offenders who are older and or in a position of trust (see Rokowaqa HAA 37.2004 and Kabaura HAC 117/10). By starting her sentence at 5 years, the Magistrate was already beyond the upper tariff of 4 years. To take such a high starting point she was clearly influenced by the age difference between the two, and it was therefore unjust for her to then add 12 months for the aggravation of age difference.
14. I would recast the sentence pursuant s.256 of the Criminal Procedure Decree. For the offence of defilement of a girl under the age of 16, I take a starting point of 3 years which reflects the age difference. There

is nothing to add as an aggravating feature. I would deduct 6 months for the accused's clear record and a further 10 months as a full third for the plea of guilty, resulting in a final sentence of 20 months imprisonment.

For the offence of abduction I retain the Magistrate's sentence of 18 months and making that concurrent would mean that the appellant should now serve a total sentence of 20 months imprisonment from the 21st May 2014.

15. To that extent the appeal against sentence succeeds.



A handwritten signature in black ink, appearing to read "P. Madigan", written over a large, stylized loop.

P.K. Madigan
Judge

At Suva
13 July, 2015