

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 255 of 2018

[CRIMINAL JURISDICTION]

STATE

V

JR (JUVENILE)

Counsel : Ms. S. Tivao for the State
Ms. L. Ratidara for the Accused

Date : 23 August 2019

[The name of the victim and that of the juvenile offender are suppressed. Accordingly, the victim will be referred to as "NR" and the offender as "JR". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said victim or the offender.]

ORDER

1. JR, you have pleaded guilty to the charge produced below and were found guilty as charged accordingly;

Statement of Offence

RAPE: contrary to section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

JR on the 15th of June, 2017 at Kadavu in the Southern Division penetrated the mouth of NR, a child under the age of 13 years with his penis.

2. You have admitted the following summary of facts;
1. *The juvenile is JR of Ravitaki village, Kadavu. His date of birth is 30th of April, 2005. The birth certificate of the juvenile is attached. The juvenile was 12 years old as at 15th of June, 2017.*
 2. *The complainant in this matter is NR of Ravitaki village, Kadavu. Her date of birth is 27th of June, 2013. The birth certificate of the complainant is attached. The complainant was 3 years old as at 15th June, 2017.*
 3. *The juvenile and the complainant are from the same village.*
 4. *On the afternoon of 15th of June, 2017 the juvenile called the complainant and took her to a vacant house within their village at Ravitaki village, Kadavu. He then inserted his penis into her mouth.*
 5. *The uncle of the complainant, namely Akariva Tualau had heard the juvenile calling the complainant before the juvenile had taken the complainant to the vacant house. Akariva had noticed that the complainant was missing and began to search for the complainant. He found the complainant as she came out of a vacant house. He noticed that she was in a distressed state so he asked her what had happened. She informed him that the juvenile put his penis into her mouth. He then took the complainant to his mother.*
 6. *The complainant repeated the allegation in front of her grandmother. The uncle then brought the juvenile with the juvenile's mother to the grandmother's house. The complainant again repeated in the presence of the juvenile that the juvenile had put his penis in her mouth. The juvenile admitted in everyone's presence that he had put his penis in the complainant's mouth. He kept on repeating 'I only did her mouth.'*
 7. *The juvenile was interviewed under caution on the 20th of June, 2017 whereby he admitted taking the complainant to a vacant house, once there he put his*

penis into the complainant's mouth [Question and Answer 31 - 33]. The caution interview of the juvenile is annexed hereto.

3. During your cautioned interview you have admitted that you knew that what you did was wrong.
4. Pursuant to section 207(1) of the Crimes Act 2009 ("Crimes Act") read with section 3(4) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), the maximum punishment for rape is life imprisonment.
5. Section 30 of the Juveniles Act reads thus;

Restrictions on punishment of juveniles

30.- (1) No child shall be ordered to be imprisoned for any offence.

(2) No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A young person shall not be ordered to be imprisoned for more than two years for any offence.

6. Section 2 of the Juveniles Act defines "child" as a person who has not attained the age of fourteen years. Therefore, you were a child within the meaning of the Juveniles Act at the time the offence was committed.
7. The current position is that an offender's age at the time of offending should be considered when the provisions under section 30(1) of the Juveniles Act are applied. (See *Komaisavai v State* [2017] FJCA 91; AAU154.2015 (20 July 2017))
8. It follows that, since you were a child at the time you committed the offence, you cannot be ordered to serve a term of imprisonment. However, as I explained in the case of *State v TL (Juvenile)* [2019] FJHC 611; HAC99.2019 (21

June 2019), a detainment of a juvenile offender at the Juvenile Development and Rehabilitation Centre ("Rehabilitation Centre") does not amount to an imprisonment.

9. You have raped a child who was 03 years old at the time. You took her to a vacant house in the village and then inserted your penis into her mouth.
10. The age disparity between you and the victim which is 09 years and the fact that the victim was only 03 years old at the time of offending are aggravating factors in this case.
11. You entered an early guilty plea to the offence you are found guilty of. The said plea was however vacated by the court because the prosecution initially wanted to proceed with another charge which you maintained that you did not commit. Later the prosecution decided to proceed only with the current charge and you again pleaded guilty to the charge. Therefore, I will treat your guilty plea as an early guilty plea for the purpose of this punishment. You are remorseful and you have cooperated with the police. These are your mitigating factors.
12. In mitigation your counsel has also submitted that you have committed this offence out of curiosity after being exposed to pornography you have been watching with your peers in the village. This gives a clear picture as to what motivated you to commit the offence. Given this submission it is clear that your parents and guardians have failed in their duty to look after you and provide you with proper guidance. Moreover, given the evidence in this case, it is manifestly clear that even the parents and the guardians of the 03 year old victim have not exercised due diligence in looking after the victim. This is an issue the elders in the village should consider addressing, in order to prevent this type of offences being committed in the village in the future.
13. I have perused the victim impact statement submitted by the prosecution. I was unable to discern from that statement any particular impact that could be clearly attributed to the offence committed in this case. I note that the counsellor who

prepared the victim impact statement had stated that the victim is trying to dissociate herself from the incident and is choosing not to acknowledge it. The counsellor says that further counselling sessions needs to be conducted to establish 'a new coping mechanism, one where there is no need to bury her emotions or dissociate herself'.

14. By accepting the responsibility for his actions, the juvenile offender has saved the 03 year old victim from having to recall and give evidence about her ordeal. However, from what could be gathered from the victim impact statement, the intended counselling sessions seems to be aimed at reminding the victim about the incident and getting her to talk about it despite the fact that the victim does not want to talk about the incident. On the face of it, this does not appeal to common sense.
15. Suffice it to say that it is important for the victim to be handled by a counsellor who is specially qualified in dealing with early childhood trauma.
16. Your counsel has submitted a character reference from your class teacher of the present school which is endorsed by the head teacher. According to the said report you have displayed your conviction to reform through your hard work to achieve academic and personal progress. Further, based on your attitude and your performance, you were said to be chosen as a prefect. The report submitted by the Social Welfare Department also confirms that you are on the correct path now and you have learned your lesson. According to the said report, presently, you are living with one of your uncle's and the said house provides a good environment for your development. The said uncle and his wife have agreed to provide you with the necessary assistance for you to become a good citizen of this country.
17. The question I have to deal with now is whether I should take you away from your present environment and detain you at the Rehabilitation Centre. I note that you were detained at the Rehabilitation Centre for a period of 03 months

and 14 days before you were granted bail. In view of the progress you have made with regard to your education and overall personal development as evinced by the documents submitted during the hearing on sentencing and mitigation, I have decided that it would not be appropriate and not be in your best interest for you to be detained at the Rehabilitation Centre for a further period of time. The period of three and a half months you were detained was a sufficient punishment. I have weighed the benefits you would gain from being detained at the said Rehabilitation Centre for a further period of time and the deterrent effect of such detainment, against the possible impact on you in the event you are to be taken away from your present environment. In my view, changing your present environment at this stage will have a negative effect on you and your development.

18. However, I consider it necessary for the Director of Fiji Juvenile Rehabilitation and Development Centre to monitor you till you turn the age of 18 years.
19. In view of the fact that your parents have neglected in their duty to properly look after you, I have decided to impose a fine on them. It has been brought to my attention that your parents had to undergo difficulties due to this case from the date you were arrested. They had to travel from Kadavu to be present in court for your case. Considering all the circumstances, a fine of \$50 is imposed on your father and this should be paid within 02 months from today.
20. Further, I would also order your father to give security for your good behavior until you turn 18 years in terms of the provisions of section 32(1)(d) and 34(2) of the Juveniles Act and he would be required to enter into a bond of \$1000 accordingly.
21. In the result;
 - a) The juvenile offender is advised that he should behave well and should endeavor to become a good citizen of this country;

- b) The Director, Fiji Juvenile Rehabilitation and Development Centre is hereby directed to monitor the juvenile offender until he turns 18 years old and take necessary action accordingly, including the exercise of the said Director's discretion to have the juvenile offender under his care in terms of the provisions of section 38 of the Juvenile Act if necessary;
- c) The juvenile offender's father is ordered to pay a fine of \$50 at the Suva High Court Criminal Registry before 23/10/19; and
- d) The juvenile offender's father is ordered to give security in the value of \$1000 for the good behavior of the juvenile offender until the said offender's 18th birthday.

22. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Juvenile