

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 17 OF 2023

STATE

V

L. T [A Juvenile]

Counsel : Mr. J. Nasa for the State.
: Ms. L. Volau for the Juvenile.
Date of Hearing : 19 May, 2023
Date of Punishment : 22 May, 2023

PUNISHMENT

(The name of the victim and the juvenile are suppressed they will be referred to as W.W and L.T respectively)

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 21st April, 2023:

Statement of Offence

SEXUAL ASSAULT: contrary to section 210 (1), (b) and (i) of the Crimes Act 2009.

Particulars of Offence

L.T on the 19th day of January, 2023, at Nadi in the Western Division, procured W.W to commit an act of gross indecency.

2. On 12th May, 2023 the juvenile pleaded guilty to the above count in the presence of his counsel, thereafter on 16th May, 2023 the juvenile understood and admitted the summary of facts read.

3. The summary of facts read by the state counsel is as follows:

On 9th January, 2023, the three year old victim and the juvenile were alone in the bedroom at the victim's home at Balenakula Settlement, Nadi. Whilst alone in the bedroom, the juvenile removed his pants and erected his penis. Thereafter, the juvenile told the victim to touch his penis, to which the victim did as told.

At this time Alanieta the mother of the victim walked into the bedroom and saw the juvenile's erected penis and the victim kneeling on his feet. Alanieta questioned the juvenile as to what he was doing. She then reported about the juvenile to his parents and lodged a police complaint.

The juvenile was arrested, interviewed and charged. In his caution interview, the juvenile admitted committing the offence of sexual assault as charged.

4. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his freewill.

5. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of sexual assault as charged. In view of the above, this court finds the juvenile guilty as charged.

6. The learned counsel for the juvenile presented the following mitigation:
 - a) The juvenile is 15 years of age;
 - b) Year 9 Student;
 - c) Resides with his parents and 4 siblings;
 - d) Pleaded guilty at the first available opportunity;
 - e) Cooperated with the police;
 - f) First and young offender;
 - g) Is remorseful for what he has done;
 - h) Seeks forgiveness of the court;
 - i) Promises not to re-offend.

TARIFF

7. The maximum penalty for the offence of sexual assault is 10 years imprisonment. The tariff for this offence is from 2 years to 8 years imprisonment depending on the category of offending (*see State vs. Epeli Ratabacaca Laca criminal case no. HAC 252 of 2011 (14 November, 2012)*). At paragraphs 6 and 7 Madigan J. had stated the following:

6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in Abdul Kaiyum HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is

reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.

7. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

8. These very sensible categories of offending are adopted by this Court and they provide a very useful guide to sentencing within the tariff of two to eight years.

8. The juvenile falls under a special categorization when it comes to punishment under section 30 (3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

AGGRAVATING FACTORS

9. The following aggravating factors are obvious in this case:

- a) Breach of Trust

The juvenile and victim are cousins. The victim was playing with the juvenile because he trusted him. The juvenile breached the trust of the victim by his action. This type of offending has now become very prevalent.

- b) Planning

This is an opportunistic offending the victim and the juvenile were playing in the bedroom and the juvenile took advantage of the situation.

- c) Victim was vulnerable

The victim was vulnerable, naive and innocent the juvenile took advantage of the situation and the circumstances that prevailed at the time.

d) Age difference

The victim was 3 years of age and the juvenile was 14 years, the age difference is substantial. The juvenile was the matured of the two.

SOCIAL WELFARE REPORT

10. As per the order of this court the Social Welfare Department conducted a home assessment and interviews before compiling a pre-punishment report for the juvenile.
11. The Social Welfare Department recommends the following for the juvenile:
 1. *The court to consider a sentence for L.T with special conditions that increases the level of rehabilitation programs and supervision.*
 2. *The Juvenile to attend counselling services with the Medical Services Pacific (MSP).*
 3. *The Juvenile be given a chance for rehabilitation that will help him live as a law abiding citizen.*
 4. *The Juvenile to attend any programs under **Section 9 of the Community Based Correction Act 2018** assigned by the Community based Officer of the Community Volunteer Supervisor (Section 8 of the Community Based Correction Act 2018).*
 5. *The Juvenile to be in good behaviour and not to reoffend.*

6. *That a progress report be submitted to the court or as otherwise directed by the Court and the Community based Corrections officer and the juvenile, L. T to attend court on these occasions.*

PARENTAL SUPPORT

12. The parents of the juvenile were in court they have pledged their full support for their son. The parents are saddened by the actions of the juvenile and they take responsibility. The juvenile was in court and he expressed regret and remorse he also takes responsibility for his actions and promises not to reoffend.
13. As a sign of their commitment both the parents of the juvenile are happy to enter into a bond of \$500.00 and are willing to participate in any programs the Social Welfare Department may wish them to be part of with their son.
14. Considering the objective seriousness of the offence committed, I select 1 year imprisonment as the starting point punishment of the offence committed. The punishment is increased for the aggravating factors.
15. For the early guilty plea which I consider to be genuine and mitigation the punishment is further reduced. From the court file the juvenile has not been in detention so no further reduction will be given. The final punishment is now 2 years imprisonment. In my view this case has been an eye opener for the juvenile.
16. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.

17. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

“[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 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."

18. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended punishment.
19. The juvenile is a young person as per the Juveniles Act, he is of good character, isolated offence was committed by him, he was 14 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and he takes full responsibility for his actions. These special reasons render immediate imprisonment term inappropriate.
20. The juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future. This court has taken into account rehabilitation as a crucial factor in favour of the juvenile.
21. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that a suspended punishment is just in all the circumstances of the case.
22. The only reason why this punishment is below the tariff is because the Juveniles Act imposes a limit on the punishment for young persons under section 30 (3) of the Juveniles Act.
23. In summary the juvenile is imposed a punishment of 2 years imprisonment which is suspended for 3 years with immediate effect. The effect of the suspended sentence is explained to the juvenile.
24. The following orders are to take immediate effect:

- a) The juvenile is imposed a punishment of 2 years imprisonment as a punishment for the offence of sexual offence which is suspended for 3 years with immediate effect;
- b) The juvenile is to be placed under probation by the Social Welfare Department for the next two years. The terms of the probation are to be worked out by the Social Welfare Department in consultation with the Probation Officer and the parents of the juvenile;
- c) A permanent Domestic Violence Restraining Order is issued to protect the victim under the Domestic Violence Act being non-molestation orders;
- d) Both parents of the juvenile are to sign a good behaviour bond jointly on behalf of the juvenile in the sum of \$500.00. The parents are also to pay a fine of \$150.00 within 14 days from today payable at the High Court at Lautoka;
- e) The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of his parents with the view to assist him in keeping out of conflict with the law;
- f) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;
- g) It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;
- h) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department, Lautoka;

- i) 30 days to appeal to the Court of Appeal.



Sunil Sharma
Sunil Sharma
Judge

At Lautoka

22nd May, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Juvenile.