

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 146 OF 2023**

**STATE**

**V**

**K.W.L.U.T [Juvenile]**

**Counsel** : Mr. U. Lal for the State.  
: Ms. L. Taukei for the Juvenile.  
Ms. M. Simpson for the Social Welfare  
Department.

**Date of Hearing** : 05 February, 2024

**Date of Punishment** : 05 February, 2024

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**PUNISHMENT**

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*(The names of the victim and the juvenile are suppressed they will be referred to as S.M and K.W.L.U.T respectively)*

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 26th September, 2023:

## **FIRST COUNT**

### ***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (a) and (3) of the Crimes Act 2009.

### ***Particulars of Offence***

K.W.L.U.T, on an unknown date in 2022, at Lautoka in the Western Division, penetrated the vagina of “S.M”, a child under the age of 13 years, with his penis.

## **SECOND COUNT**

### **(Representative Count)**

### ***Statement of Offence***

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

### ***Particulars of Offence***

K.W.L.U.T, on an unknown date in 2022, at Lautoka in the Western Division, penetrated the mouth of “S.M”, a child under the age of 13 years, with his penis.

2. On 16<sup>th</sup> November, 2023 the juvenile pleaded guilty to the second count in the presence of his counsel, thereafter on 18<sup>th</sup> December, 2023 the juvenile understood and admitted the summary of facts read by the state counsel.
3. The brief summary of facts is as follows:

The victim is the niece of the juvenile. On an unknown date in the year 2022, the victim (8 years of age) was playing with her sister near a broken tree in front of her house. The juvenile (14 years of age) called the victim near the mangroves and made her forcefully suck his penis. Another

incident occurred in the year 2022 on an unknown date the victim was playing shark and lion game in the river with her cousin. The victim was asked to pair with the juvenile to play the game and whilst playing, the juvenile made the victim to forcefully suck his penis in the river.

The matter came to light when the victim's aunt questioned the victim after seeing her about to jump off a tree. The victim relayed the incidents to her aunt. The matter was then reported to police the juvenile was arrested and caution interviewed he admitted committing the offence. The juvenile was subsequently charged for the offence of rape.

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 own 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 rape as charged. In view of the above, this court finds the juvenile guilty as charged for the second count of rape.

### **MITIGATION**

6. The learned counsel for the juvenile presented the following mitigation:
  - a) The juvenile was 14 years of age at the time of the offending;
  - b) Year 11 student;
  - c) Resides with his parents and his siblings;
  - d) First time in conflict with the law;

- e) Cooperated with police during investigation;
- f) Pleaded guilty at the earliest opportunity;
- g) Seeks forgiveness of the court, promises not to reoffend;
- h) Remorseful for his action.

### **TARIFF**

- 7. The maximum penalty for the offence of rape is life imprisonment. According to the case of *Aitchison vs The State [2018] FJSC 29, CAV 0012 of 2018 (2 November, 2018)* the tariff for the rape of a juvenile is an imprisonment term between 11 years and 20 years.
- 8. Under section 30 (3) of the Juveniles Act the juvenile falls under a special categorization when it comes to punishment 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) Planning

There is some degree of planning by the juvenile. He saw the victim playing with her sister and other children. He called her away from the others and did what he wanted to do.

b) Victim was vulnerable and helpless

The victim was vulnerable and helpless the juvenile took advantage of the situation.

c) Age difference

The victim was 8 years of age whereas the juvenile was 14 years of age, the age difference is substantial.

d) Breach of Trust

The victim is the niece of the juvenile. The victim trusted the juvenile and upon being called by the juvenile she went to him. The juvenile grossly breached the trust of the victim by his action.

e) Prevalence of offending

There is a prevalence of such offending involving juveniles who are known to the victim.

## **SOCIAL WELFARE REPORT**

10. As per the order of this court the Social Welfare Department conducted a house assessment and interviews before compiling a pre-punishment report for the juvenile.
11. The Social Welfare Department recommends the following:
  - a) The juvenile be given a second chance in life;

- b) Be allowed to continue his education, attend counselling services and be part of rehabilitation programs and supervision.

### **PARENTAL SUPPORT**

12. The father of the juvenile was in court he pledged his full support for his son. He admitted it was due to his lack of proper parenting the juvenile went into the wrong path. However, he has seen positive changes in his son after he and a church colleague started to counsel, spend more time and paid more attention to the juvenile. The father of the juvenile also assured the court that they will continue with their supervision, guidance and support of his son. The change he has seen in his son is encouraging and the family as a whole is confident their son will make a better citizen.
13. As a sign of his commitment the father of the juvenile is happy to enter into a bond of \$300.00 and is willing to participate in any programs the Social Welfare Department may wish the family 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 of the punishment. For the aggravating factors, I increase the punishment by 3 years. The interim punishment now stands at 4 years imprisonment.
15. For the early guilty plea which I consider to be genuine and mitigation I reduce the punishment by 2 years, the punishment now is 2 years imprisonment. From the court file the juvenile has not been in detention for this offence.

16. The final punishment is now 2 years imprisonment for one count of rape the juvenile is charged with. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has 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 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 action. These special reasons render immediate imprisonment 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 year he is schooling in year 11. The juvenile also accepts responsibility and has promised not to reoffend. This court has taken into account rehabilitation over and above imprisonment term.
21. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the 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.
23. In summary the juvenile is imposed a punishment of 2 years imprisonment as a punishment for the offence of rape 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 for one count of rape which is suspended for 3 years;
- b) The juvenile is to be placed under probation with the Social Welfare Department for the next three years. The terms of the probation is to be worked out by the Social Welfare Department in consultation with the Probation Officers or Community Volunteers and the parents;
- c) The father of the juvenile is to sign a good behaviour bond on behalf of the juvenile in the sum of \$300.00. The father of the juvenile is to pay a fine of \$100.00 by five installments at the rate of \$20.00 per week payable at the High Court;
- d) The Social Welfare Department is to immediately arrange for the counselling of the juvenile in the presence of his parents with the view to assisting him in keeping away from conflict with the law;
- e) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;
- f) It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;

- g) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department, Lautoka;
- h) 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**



**At Lautoka**

05 February, 2024

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Juvenile.**