

IN THE RESIDENT MAGISTRATE'S COURT AT SUVA

Criminal Case No. 1385 of 2010

STATE

v.

ISIMELI SAVU

For Prosecution. Ms. Segrán J. (DPP Office)

Accused. In Person

SENTENCE

1. You, ISIMELI SAVU, are here today to be sentenced on plea of guilty on your own accord for two counts of Sexual Assault, offences contrary to sec. 210 (1) (a) and sec. 210 (1) (b) (i) of the Crimes Decree 2009.
2. When this case was called in Court on 05th August 2010, you pleaded guilty to both counts and when inquired by the Court, you informed that you are pleading guilty on your own free will. I am satisfied that your plea is unequivocal and you tendered the plea on your own volition.
3. According to the facts, (which you admitted), between the 01st February 2010 to 13th July 2010, in many occasions, you have touched the penis of the child victim whilst he was sleeping irrespective of the fact whether it was a day or night and forced the victim to touch your private parts including your penis. In the event

when the victim refused to let you touch him or refused to touch you, you have had scolded him and slapped him.

4 Sec. 210 of the Crimes Decree of 2009 reads as follows;

Sexual assaults

210. — (1) An person commits an indictable offence (which is triable summarily) if he or she—

(a) unlawfully and indecently assaults another person; or

(b) procures another person, without the person's consent—

(i) to commit an act of gross indecency; or

(ii) to witness an act of gross indecency by the person or any other person.

Penalty — Imprisonment for 10 years.

(2) The offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in sub-section (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.

(3) further, the offender is liable to a maximum penalty of life imprisonment if—

(a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or

(b) for an offence defined in sub-section (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or

(c) for an offence defined in sub-section (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.

5 This above-mentioned offence is a new addition to the Fiji Judicial system as the repealed Penal Code did not contain any offence with above description. Repealed Penal Code identified similar offences such as "Indecent Assault on Females", "Unnatural Offences", "Attempts to commit Unnatural Offences and Indecent

Assaults" and "Indecent Practices between Males", but none of those offences contained the same description given in Sec. 210 of the Crimes Decree 2009 and there is a vast difference between the imprisonment terms prescribed by the Law.

- 6 The offences you were charged with carries a maximum penalty of ten years imprisonment, which is far above than all the other similar offences mentioned in the repealed Penal Code.
- 7 The offences you were charged are aggravated form of indecent assault offences and so far High Court has not set tariff. However, for determining the starting point for the sentence, I wish to be guided by the guidelines set out by Shameem J in the following case.
- 8 In Rokota v. The State, Criminal Appeal No. HAA0068 of 2002, after reviewing past cases on indecent assault, Shameem J formulated the following guidelines.
- "Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty, which saves the victim the trauma of giving evidence.*
- These are the general principles, which affect sentencing under section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in*

particularly serious cases, a five-year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault of a non-penetrative and fleeting type. Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than these."

- 9 However, unlike in the repealed Penal Code, the present offences you were charged with carries a maximum imprisonment term of 10 years. Therefore, I set my starting point of sentencing for 05 years imprisonment. To reflect your early guilty plea I reduce 18 months from your sentence. Since all your previous convictions are more than 10 years old, I disregard them.

Aggravating facts

- 10 You are 32 years old and the victim is just 07 years old. You are the uncle of the victim and both of you were living in the same house. Apart from that you were employed by the Fiji military force, which requires a highest degree of discipline.
- 11 You have shamelessly taken advantage on that very young nephew of yours to satisfy your animal instincts; an action which would never condoned by this court. Considering these facts as aggravating facts, I add another 02 years to your sentence.
- 12 Your sentence now stands for 5 years and 06 months.

Mitigating facts

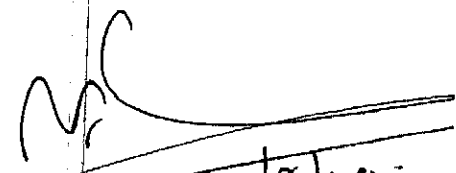
- 13 In mitigation, you said that you are 32 years old and single. You asked for Court's forgiveness promising not to re-offend.
- 14 To reflect those mitigating facts I reduce 18 months from your sentence.

15 Your sentence now stands for 4 years imprisonment.

16 As per the requirements in sec. 18 (1) of the Sentencing and Penalties Decree 2009, I order that you serve minimum of 02 years imprisonment period without being eligible for a pardon

17 You have 28 days to appeal.

On this Tuesday the 31st day of August 2010


31/8/10
Kaweendra Nanayakkara

Resident Magistrate

