

**IN THE RESIDENT MAGISTRATES COURT**  
**AT SIGATOKA - CRIMINAL JURISDICTION**

**Criminal File No. 362 of 2017**

**BETWEEN** : State

**PROSECUTION**

**AND** : Rajneel Kavitesh Rao

**ACCUSED**

**For the State** : Sergeant Elina

**For the Accused** : Ms. Nabainivalu (**LAC**)

Note : Complainant's name is anonymised as she is a Juvenile.

---

**SENTENCE**

---

1. The Accused was charged with Attempt to Commit Rape contrary to Section 208 of the **Crimes Act 2009** however after trial the court convicted him for the lesser offence of Indecent Assault contrary to Section 212 (1) of the **Crimes Act 2009**.
2. The brief facts are that the accused (20 years of age) on 12<sup>th</sup> January 2016 had rubbed oil on the naked chest of S.B (female, class 4 student), had shown her his penis and indicated to her that he wanted to have sexual intercourse with her.
3. In mitigation Accused's counsel submitted that the accused was 22 years old, single and was unemployed. Further counsel submitted that the Accused was a former employee of CDP and had been remanded for the past five (5) months.
4. The period in remand according to his counsel had taught him a lesson and as a consequence a non-custodial sentence was sought.
5. Prosecution did not tender any previous conviction listing for the accused as such the court deems him a first offender.

6. The maximum sentence for the offence of Indecent Assault is 5 years imprisonment with courts accepting that the decision in **RT Penioni Rokota v State** HAA 68/02S as the relevant tariff for this offending. In **RT Peniona Rakota's (supra)** case Shameem J (as she then was) held that:

"Sentence for indecent assault ranges from 12 months imprisonment to 4 years. The gravity of the offence would determine the starting point for the sentence. A non-custodial sentence will only be appropriate in cases where the ages of victim and the accused are similar and assault of a non-penetrative and fleeting type"

4. In reaching the appropriate sentence the court is mindful of Section 4(1) of the **Sentencing and Penalties Act 2009** which it regurgitates herein below as follows:

*"Sentencing Guidelines*

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*
- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;*
  - (b) to protect the community from offenders;*
  - (c) to deter offenders or other persons from committing offences of the same or similar nature;*
  - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
  - (e) to signify that the court and the community denounce the commission of such offences; or*
  - (f) any combination of these purposes...."*

5. In **Laisiasa Koroivuki v the State** (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

6. Considering the gravity of offending and the accused's culpability, this Court selects eighteen (18) months as the starting point of the sentence.
7. The court considers that the vast difference in the age of the accused and the victim as an aggravating feature and adds six (6) months to sentence bringing the total of the sentence to twenty four (24) months.
8. The court notes mitigation presented as highlighted under paragraphs 2, 3 and 4 above-herein which it deducts three (3) months bringing the sentence to twenty-one (21) months.
9. The accused has been remanded for a period of six (6) months three (3) weeks and two (2) days.
10. Period in remand is equated as seven (7) months and pursuant to Section 24 of the **Sentencing and Penalties Act 2009** the court deducts that period as period of imprisonment already served.
11. The deduction of the remand period results in the final sentence of fourteen (14) months.
12. Given the nature of the offence and the fact that the vulnerable in the society must see that the law punishes those who intrude into their privacy without their consent, the court shall not suspend any part of the sentence but shall order an immediate custodial sentence.
13. As such Rajneel Kavitesh Rao you are hereby sentenced to fourteen (14) months imprisonment effective immediately and pursuant to Section 18 (3) of the

***Sentencing and Penalties Act 2009*** a non-parole period of eight (8) months is imposed.

14.28 days to appeal.

