

**IN THE MAGISTRATES COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 236 - 2018

STATE

-v-

DAVENDRAN

Before : RM Fotofili L.
For Prosecution : WPC Chand [Police Prosecution]
Accused : Mr Samy A. [Legal Aid Commission]
Trial Date : 14th January, 2019
Date of Judgment : 19th February, 2019
Date of Sentence : 22nd October 2019

SENTENCE

1. **DAVENDRAN**, you pleaded not guilty to the following charge preferred by prosecution:

Statement of Offence

DEFILEMENT OF A YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE: Contrary to section 215 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

D between the 3rd day of March, 2018 and the 22nd day of April, 2018 at a place in Tavua in the Western Division had unlawful carnal knowledge of **R** a young person above the age of 13 years and under the age of 16 years.

2. After trial, I acquitted you of the said charge but I convicted you of the lesser offence of indecently assaulting **R** or the victim which is contrary to section 212 (1) of the **Crimes Act 2009**.
3. **R** the victim is your step daughter. The offence took place sometime in 2018. At the time, the victim would have been around 13 years old and the defendant would have been 56 years old. When the mother was out of the house to pick the children or the

victim's sibling from school, the defendant showed the victim his penis and also touched the victim's vagina. It is unclear to me and I am unsure whether the victim was naked at the time when the defendant touched her vagina and the benefit will go to the defendant that the victim was dressed at the time he touched her vagina and the defendant will be sentenced on that basis.

4. The case was called for the first time on the 14th of August 2018 but the defendant was absent with information received that he had another Lautoka High Court matter for which he was remanded in custody.
5. When the defendant appeared for the first time before me on the 4th of September 2018, he was remanded in custody and has been in remand ever since.
6. At the time, this case involved an alleged sexual offence against a young family member with the chances of interference with the witness being high if the defendant was released on bail and there was information before the court [undisputed by the defendant] that he had another pending case at the Lautoka High Court for attempted murder in relation to the same child victim.
7. The defendant had to be remanded.
8. Before fixing this matter for sentence, there was information received during mitigation that the defendant may have health problems. There was no medical report provided to substantiate this but the defendant was willing to subject himself to a medical examination.
9. Substantial time was taken to get a report from hospital with confusion whether the defendant was actually escorted to the hospital since he is in remand and if taken to hospital, whether a written report was provided by the examining doctor.
10. A report from hospital was eventually received with admirable assistance from the examining doctor.
11. There is no remarkable health problem that the defendant is currently facing. The findings of the doctor are not disputed by the defence.
12. I calculate that the delay in obtaining a report between the 8th of April 2019 to 13th September 2019 is delay not caused by the defendant and that time he spent in remand during that period will be considered as time spent or served and I will deduct this from his sentence. I approximate the time to be 5 months.
13. The defendant is now 57 years old. He has another daughter who is 6 years old and is schooling who needs his assistance and another child who is 4 years old. His

partner is pregnant and would have given birth by the time this sentence is pronounced.

14. There is no information before me that the defendant has any prior conviction and I will treat this as his first offence.

MAXIMUM SENTENCE

15. For indecent assault, the maximum punishment that is imposable is up to 5 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

16. The sentencing tariff sentencing tariff for this type of offence is between 12 months to 4 years imprisonment [Rokota v The State [2002] FJHC 168; HAA0068J.2002S (23 August 2002)].

Starting Point

17. Considering the objective seriousness of the offence, I select a starting point of 15 months imprisonment.

Aggravating Factors

18. The victim was your step daughter or a domestic relationship existed. You breached the trust bestowed on you.
19. She was 13 years old at the time.
20. You showed her your penis and you touched her vagina while she was dressed.
21. Your sentence is increased to 2 years and 8 months imprisonment.

Mitigating Factors

22. You are a first offender.
23. You have a family to support.
24. I reduce your sentence to 1 year and 11 months imprisonment.

DISCRETION

25. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009 if your sentence does not exceed 2 years imprisonment.
26. I am also mindful of section 4 of the Sentencing and Penalties Act 2009 when considering your sentence in this case.
27. I place emphasis on the community's denunciation of this type of offending and the need for deterrence when sentencing you.

SUMMARY

28. **You are sentenced 1 year and 11 months imprisonment or 23 months imprisonment.**
29. **As explained above, I will consider only 5 months of your time spent in remand as time served and I will deduct this from your sentence.**
30. **You have 18 months imprisonment remaining.**
31. I am inclined to suspend your sentence but only in part.
32. **12 months imprisonment will be suspended for the next 3 years.**
33. Do not commit any other offence in the next 3 years, if you do, this 12 months imprisonment held in waiting maybe activated.
34. **You will serve 6 months imprisonment immediately.**

35. The interim domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions which was imposed on you on the 14th of August 2018 is made final. This is to protect the victim.
36. Do not breach any of the condition of the DVRO or you may be charged with another offence.

28 days to appeal.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at Tavua this 22nd day of October, 2019