

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 76 - 2016

STATE

-v-

SV

For Prosecution : WPC Chand [ Police Prosecution ]  
Accused : Mr Samy A. [ Legal Aid Commission ]  
Trial Date : 4<sup>th</sup> day December, 2018  
Date of Judgment : 8<sup>th</sup> day of January, 2018

Date of Sentence : 9<sup>th</sup> day of April 2019

**SENTENCE**

1. SV, after trial, I found you guilty of the following charge:

*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*

The defendant between the 1<sup>st</sup> day of October, 2015 and the 31<sup>st</sup> day of October, 2015 at Tavua in the Western Division had unlawful carnal knowledge of [ name omitted ] a young person being of or above the age of 13 years and under the age of 16 years.

2. You were 19 years old at the time of the offence. You went to the same school with the female victim. You were in form 6 at the time and she was in form 4. She was 15 years old at the time. Both of you first met in 2015. In October of that same year, you met up with her for the second time and this was in town. You two went to the back of the hospital and had sexual intercourse there. You impregnated her. She only found out 2 months later that she was pregnant. She gave birth to a boy. There were

no complications during the pregnancy and the birth. You all are staying together. The victim describes you as a supportive father to the now 3 year old child.

3. You are 21 years old now. Your counsel submits that this was a virtuous relationship. You still maintain that you thought that she was of legal age. You are working at a tourist centre and you are the only one who earns for your young family. You plan to marry the victim. You seek forgiveness.
4. You have not spent any time in remand.

#### **MAXIMUM SENTENCE**

5. For the defilement of a person who is between 13 years but below 16 years, this offence attracts a maximum sentence of 10 years imprisonment.

#### **SENTENCING RANGE or SENTENCING TARIFF**

6. The sentencing tariff for this type of offence is between a suspended sentence for virtuous relationships to 4 years imprisonment [ see for example **Etonia Rokowaga v. State** Criminal Appeal No. HAA 37 of 2004 & **Naiwau v State** [ 2018 ] FJHC 193; HAA01.2018 ( 16 March 2018 ) & ].

#### **Starting Point**

7. The circumstance of the case persuades me to select a starting point of 1 year 6 months imprisonment.

#### **Aggravating Factor**

8. Although the age difference here was not substantial, there was still a marked aged difference of about 4 years.
9. I accept that you impregnated her. It is a life threatening and life changing condition.
10. Your sentence is increased to 2 years and 10 months imprisonment.

### **Mitigating Factors**

11. I accept that this is a virtuous relationship and that you support the family.
12. You will receive some discount for your past good history.
13. You were young when you committed this offence and you still are young.
14. This charge has been looming over you the past 3 years.
15. I reduce your sentence to 1 year 8 months imprisonment.

### **DISCRETION**

16. 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 is below 2 years imprisonment.
17. I am also mindful of section 4 of the **Sentencing and Penalties Act 2009** when considering your sentence in this case.
18. Denunciation of this type of offending and imposing a sentence that may deter an offender is certainly key. But so is the need to sentence you adequately in light of your circumstance.
19. You are young and your young family depends on you and largely for these main reasons, I am inclined to suspend your sentence in whole.
20. I will not order or impose any domestic violence restraining order on you as the victim is now an adult and is capable of making decisions for herself and the child and I find no evidence of violence, threat, intimidation or harassment complained against you.

### **SUMMARY**

21. Your final sentence is 1 year 8 months imprisonment.
22. It will be wholly suspended for the next 2 years.
23. Commit any other offence in the next 2 years and this 1 year 8 months imprisonment held in waiting maybe activated [ suspended term explained to the defendant ].

24. I will not impose any DVRO for the reasons explained earlier.

28 days to appeal.



Dated at TAVUA this 9<sup>th</sup> of April 2019

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Lisiate T.V. Fotofili

**Resident Magistrate**