

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

Criminal Case No. 401 of 2018

STATE

-v-

VASITO RABULI

Counsel for the State: *Ms. Vavadakua for the Director of Public Prosecutions*
Counsel for the Accused: *Mr. Buakula of the Legal Aid Commission*

Date of Sentencing Hearing: 29 April 2019 & 8 May 2019
Date of Sentence: 10 May 2019

SENTENCE

1. **VASITO RABULI** you entered a plea of guilty to two counts of **DEFILEMENT OF YOUNG PERSONS BETWEEN 13 YEARS AND 16 YEARS OF AGE**; contrary to section 215 (1) of the Crimes Act 2009.
2. The particulars of offence to which you pleaded guilty are as follows:

Count 1: That you “on the 20th day of July 2018, at Batiri, in Labasa in the Northern Division, had unlawful carnal knowledge of **S.M**, a person above the age of 13 years but below the age of 16 years.”

Count 2: That you “on the 20th day of July 2018, at Batiri, in Labasa in the Northern Division, had unlawful carnal knowledge of **S.M**, a person above the age of 13 years but below the age of 16 years.”
3. You indicated in open court that you understood and admitted the facts submitted by the State. Those facts reveal that on 20 July 2018, you inserted your penis into the vagina of **S.M**, a child of 14 years. This crime took place in the outside bathroom of the victim’s home in Batiri. You followed her into that bathroom when she had gone in there to have her shower.
4. The facts also reveal that on 21 July 2018, you again inserted your penis into the vagina of **S.M**, a child of 14 years. This happened inside the victim’s home while the other occupants of the home were away. You entered her bedroom and the act of unlawful carnal knowledge occurred there.

5. I am satisfied that you knew what you were about when you entered your guilty plea. I find you guilty and convict you on two counts of **Defilement of Young Person Between 13 years and 16 years** as charged.

Maximum Penalty & Tariff

6. The maximum penalty for this offence is imprisonment for 10 years.
7. Identifying the correct tariff is important because a sentencing Magistrate or Judge, in Fiji, is required to select a starting point from the middle to lower end of that sentencing range. Tariffs in Fiji are selected based on a study of sentences handed down for that offence over a period of time and are re-calibrated when there is an established need to increase the tariff in order to deter would-be offenders or when the legislature has amended the maximum penalty available in law signaling an expectation that harsher sentences be handed down to reflect the greater level of objective seriousness they now place on the offence.
8. In **State v. Mawi – Sentence** [2019] FJHC 324; HAC 17.2017 (12 April 2019), Perera J. held as follows:

“10. The offence of defilement serves to protect young girls from sexual exploitation [*Donumainasava v The State* [2001] FJHC 25; Haa0032j.2001s (18 May 2001)]. Having considered the Supreme Court’s stance in *Aitcheson* (supra) and the fact that the higher end of the present tariff for defilement does not reflect the intention of the legislature in increasing the punishment for the said offence from a term of 05 years imprisonment to 10 years imprisonment, I am of the view that the higher end of the tariff for the offence of defilement should now be appropriately increased. Whereas the higher end of the tariff for defilement was 04 years when the relevant maximum sentence was 05 years imprisonment under the Penal Code, the higher end of the tariff in my view should now be 08 years given that the maximum sentence for defilement under the Crime Act is 10 years imprisonment.

11. I would not consider it appropriate to disturb the lower end of the tariff. In cases where the victim is almost 16 years old and the victim and the accused are fairly close in age, a suspended term may be justified. A magistrate has the discretion to suspend the sentence if the final sentence reached is an imprisonment of 02 years or below.

12. In the circumstances, I have decided that the appropriate tariff for the offence of defilement is an imprisonment term between 02 years and 08 years. This tariff should be regarded as the range of the sentence on conviction after trial. The sentencing court may decide to suspend the sentence in line with the provisions of section 26 of the Sentencing and Penalties Act where appropriate.”

Aggravating Factors

9. You were 20 years old at the time and the victim only 14 years old. Moreover, you were an older relative visiting the victim’s home during that period. You abused S.M’s trust when you did what you did.

10. You said that you were seeing her at the time but, as counsel for the State pointed out, nothing in your Record of Interview or the Summary of Facts points to a virtuous relationship. For one thing, you were married to someone else and for another; there can be no such thing when one party is an adult at 21 years old and the other a mere child of 14.
11. Your behavior was predatory and exploitative. According to the Summary of Facts, on each occasion you took care to only approach the victim when she was alone, you then used her for your sexual gratification and then you left.

Mitigating Facts

12. You are now 21 years old. You are married to someone other than **S.M** and you and your wife have a child. You are a *yagona* farmer and you earn \$100.00 per week. You are related to the victim and you have undertaken a formal apology for what you did.
13. You took two bars of soap I am told and the family accepted your traditional apology. To be frank, for two bars of soap, I am of the view that that the acceptance of your apology was very likely a mere formality offered outside of innate courtesy rather than a genuine acceptance of *i-bulubulu*. In any event, it is not an indication of genuine remorse. More importantly, I received no indication that you have apologized to **S.M** in person or that she has personally forgiven you for your acts of defilement.
14. What is relevant is that you are a young offender and this is your first offence. You cooperated with the Police during the course of Police investigations *and* you entered a guilty plea at the first available opportunity. These are all important factors in your favour.
15. Your counsel drew to my attention the fact that you spent time in remand awaiting trial. You were remanded from 31 July 2018. The matter was first called and you were granted bail by the High Court of Fiji at some point between 31 July 2018 and 29 November 2018. I calculate your period of remand to be 4 months.

Sentencing

Count 1

16. I pick a starting point of 4 years imprisonment. I increase this sentence by 4 years to mark the significant age disparity between you and **S.M**, the abuse of trust and the callous and exploitative nature of your offending.
17. Your sentence is now 8 years imprisonment.
18. I decrease your sentence nominally by 1 month for your personal circumstances. I also decrease your sentence by 4 months for the period you may have spent in remand. Your sentence is now imprisonment for 7 years and 7 months.
19. I further reduce your sentence by 7 months for your level of cooperation with the Police. Your sentence is now 7 years imprisonment.
20. I reduce your sentence by 4 years in recognition of the fact that you are a young first offender. Your sentence is now 3 years imprisonment.

21. You were initially charged with rape. The Director of Public Prosecutions took the decision to reduce the Charge. The current charges were filed on 11 January 2019. You appeared before this Court on that day and sought Legal Aid Representation.
22. You obtained Legal Aid representation and appeared with counsel for the first time on 1 April 2019 and you entered your plea of guilty to both counts on that day. I am satisfied that this was an early guilty plea made at the first available opportunity.
23. I reduce your sentence by 1 year in recognition of the fact that by pleading guilty you saved the Court time and the State, resources in having to run a full trial. Your sentence is now 2 years imprisonment.
24. I have a duty to protect young girls from sexual exploitation: **State v. Vetaukula**, Criminal Case No. HAC 46 of 2013 (unreported, 8 July 2014). Adult perpetrators who abuse the trust of much younger victims and sexually exploit them must expect immediate custodial sentences: **State v Tulevu – Sentence** [2016] FJHC 564; HAC 65.2014 (10 June 2016); the length of which will differ depending on the mitigating and aggravating factors available in each case: **State v. Mawi – Sentence**, supra.
25. However, against the need to denounce and deter and adequately punish you for the crime you committed is a strong common law drive to rehabilitate young, first offenders in the public interest.
26. In **Prasad v. State** [1994] FJLawRp 2; [1994] 40 FLR 151 (30 September 1994), the High Court of Fiji per Kupa J. accepted that sentencing courts must work from the premise that young, first offenders should not be sent to prison unless there are compelling reasons to do so.
27. In **State v. Mocevakaca** [1990] FJLawRp 5; [1990] 36 FLR 19 (14 February 1990), the High Court of Fiji per Fatiaki J., as his Lordship then was, observed:
- “Needless to say, in the case of young first offenders there can rarely ever be any conflict between the general public interest and that of the offender. If I may say so society has no greater interest than that its young people should become useful law-abiding citizens and the difficult task of the Courts is to determine what punishment or treatment gives the best chance of achieving that end. The realization of that objective is the primary and by far the most important consideration in sentencing young first offenders.”*
28. In **Navisa v. The State** [2006] FJHC 6; HAA 148J.2005S (9 February 2006), the High Court of Fiji per Shameem J. offered this guidance:
- “The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment.”*
29. In **State v. Tuiviti (Juvenile) – Sentence** [2019] FJHC 122; HAC 53 of 2014 (22 February 2019), Aluthge J. cited the principles enunciated in **R v. Balogun** [2018] EWCA Crim 2933 to the effect that:

“...the fact that the appellant had attained the age of 18 before he committed the offences does not of itself mean that the factors relevant to the sentencing of a young offender had necessarily ceased to have any relevance. He had not been invested overnight with all the understanding and self-control of a fully mature adult.”

30. The High Court per Aluthge J. in **Tuiviti**, supra also cited **Peters** [2005] 2 Cr App R (s) 101 at [11]:

“Although the passage of an eighteenth or twenty-first birthday represents a significant moment in the life of each individual, it does not necessarily tell us very much about the individual’s true level of maturity, insight and understanding. These levels are not postponed until nor suddenly accelerated by an eighteenth or twenty-first birthday.”

31. I am permitted to suspend sentences that do not exceed 2 years pursuant to section 26 (2) (b) of the **Sentencing and Penalties Act 2009**. In light of your level of cooperation with the Police at first instance, in light of the fact that you entered a plea of guilty at the first available opportunity, in light of the fact that I am satisfied that you are genuinely remorseful for your crimes and in light of your status as a young, first offender I decide to suspend your sentence of 2 years for a period of 3 years.
32. If you commit another offence in that period and are convicted for it, you will be liable to whatever punishment is imposed in respect of that offence *and* you will be liable to serve the 2 year imprisonment term that I have suspended on this day.

Count 2

33. I repeat that process and arrive at the same result in respect of Count 2. There is nothing to diminish your level of moral culpability in respect of this count. To be clear, there is nothing to warrant a greater or lesser sentence in all the circumstances of your offending on this Count.
34. You are sentenced to 2 years imprisonment suspended for a period of 3 years.
35. If you commit another offence in that period and are convicted for it, you will be liable to whatever punishment is imposed in respect of that offence *and* you will be liable to serve the 2 year imprisonment term that I have suspended on this day.

Result

36. You are convicted of two counts of **Defilement of Young Person Between 13 years and 16 years** and are sentenced to 2 years imprisonment suspended for a period of 3 years in respect of Count 1 and 2 years imprisonment suspended for a period of 3 years in respect of Count 2.
37. The sentences are to run concurrently.

38. **28 days to appeal.**

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Seini K Puamau
Resident Magistrate



Dated at Labasa this 15th day of May 2019.