

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

Criminal Case No: 137 - 2013

STATE

-v-

NISHANT SINGH

Before : RM Fotofili L.
For, Prosecution : WPC Chand A. [Police Prosecution]
For, Defendant : Mr Reddy J. [Jiten Reddy Lawyers]
Trial Date : 25th June 2019
Date of Judgment : 28th January, 2020
Date of Sentence : 22nd of June 2020

SENTENCE

1. **NISHANT SINGH**, you pleaded not guilty to the charge but after your trial, I have found you guilty and convicted you of the following:

Statement of Offence

DEFILEMENT OF A YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE:

Contrary to section 215 (1) of the Crimes Act of 2009.

Particulars of Offence

NISHANT SINGH between 1st day of May, 2013 to 31st day of May, 2013 at Tavua in the Western Division had unlawful carnal knowledge of PR a young person being of or above the age of 13 years and under the age of 16 years.

2. At the material time when the parties had sexual intercourse, the female victim was 15 years 2 months old and the defendant was 18 years 10 months old. The parties knew each other from school. They struck up a relationship when the victim was in form 3 and the defendant was in form 7 and their relationship went on for about a year. The parties had sexual intercourse a few months into their relationship. The

parties were in love and there was talk of getting married after school. The relationship between the parties came to light after the mother of the victim came home earlier than usual and discovered the defendant at her home. Police were called thereafter.

3. The defendant is a first offender.
4. He has not spent any time in remand.
5. The defendant is now 25 years old. He is married and 'starting his own family.' He is working for a private company as an automotive engineering technician. He received the top award nationally when he was studying. He is now pursuing his Bachelor's Degree with a university. He has a loan with the government to assist him in his studies and deductions are made directly from his salary for this. He also has a personal loan for a vehicle he bought. He is the sole breadwinner. He was in love with the female victim and they planned to get married. When the matter was reported to police, they separated. The case pending for him in the past 7 years has been punishment. It has brought him shame and disrepute. The defendant is remorseful and seeks leniency. He has a high chance of rehabilitation. A non-custodial sentence is sought.

MAXIMUM SENTENCE

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

SENTENCING RANGE or SENTENCING TARIFF

7. The sentencing tariff for this type of offence is between 2 years to 8 years imprisonment [see for example **State v Antonio Matia Dinono** [2018] FJHC 871; HAC336.2018 (5th September 2019)].
8. Cases where there is a virtuous relationship between the parties can attract suspended sentences and higher sentences are recommended in cases where the defendant is in a position of trust and is much older than the victim [**State v Jabber** - Sentence [2020] FJHC 311; HAC009.2020 (13 May 2020); **State v Peniseni** [2020] FJHC 328; HAA30.2019 (22 May 2020); **State v Peceli** - Sentence [2019] FJHC 1002;

Starting Point

9. Considering the objective seriousness of the case, I select a starting point of 2 years and 3 months imprisonment.

Aggravating Factors

10. The age gap is not significant. However, I still consider a 3 year age difference between the parties to be aggravating.
11. The defendant went to and entered the house without the permission of the mother of the female victim.
12. I increase the defendant's sentence to 2 years and 11 months imprisonment.

Mitigating Factors

13. I accept that the parties had genuine feelings towards each other and had true aspirations to get married. This was a virtuous relationship.
14. The defendant was 18 years old at the time.
15. I accept that he has good prospects and he has his family to support and has his student loan to repay.
16. The defendant is also a first offender.
17. The charge has been looming over him the past 7 years.
18. I reduce his sentence to 2 years imprisonment.

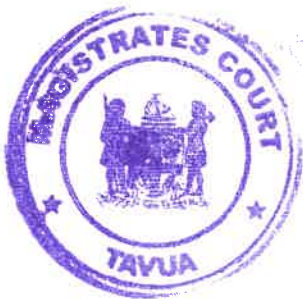
OBJECTIVE

19. I am mindful of section 4 of the Sentencing and Penalties Act 2009 when considering the defendant's sentence.

20. A sentence that reflects the community's denunciation of this type of offending, the need for deterrence and the need to punish the defendant adequately is important.

SUMMARY

21. **NISHANT SINGH**, you did not spend any time in remand and so no further time will be deducted from your sentence.
22. You are sentenced to 2 years imprisonment.
23. I decline fixing any non-parole period to promote your rehabilitation.
24. I am persuaded to suspend your sentence in whole and it will be suspended for the next 2 years from today.
25. You are not to commit any other serious offence or offence punishable with imprisonment in the next 2 years or you risk this 2 years imprisonment that is held in waiting, being activated.
26. 28 days to appeal if any party is dissatisfied with the sentence.



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 22nd day of June, 2020