

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 48 - 2015

STATE

-v-

**KRISHNEEL MUDALIAR**

Before : RM Fotofili L.  
For Prosecution : Inspector Lenaitasi S. [ Police Prosecution ]  
For Defendant : Ms. Tavaiqia L. [ LAC ]  
Date of Trial : 22<sup>nd</sup> November 2019  
Date of Judgment : 25<sup>th</sup> February 2020  
Date of Sentence : 16<sup>th</sup> November 2021

**SENTENCE**

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

*Statement of Offence*

**INDECENT ASSAULT**: Contrary to section 212 ( 2 ) of the **Crimes Act 2009**.

*Particulars of Offence*

**KRISHNEEL MUDALIAR** on the 4<sup>th</sup> day of March, 2015 at Tavua in the Western Division unlawfully and indecently assaulted **SH** by touching her thigh.

2. The female victim was 14 years old at the time and was a secondary school student. You were around 21 years old. It was after school in the afternoon when the victim took the bus, returning home. You were also a passenger in the bus. Both you and the female victim sat in the same seat. On the trip, you put your hand on her thigh. She was afraid. She did not consent. She tried to stand up but you pulled her skirt to sit down. She was uncomfortable. Later she managed to stand up and sit on another seat. She complained to her brother about what happened.

3. You are a first offender.
4. You have not spent any time in remand.
5. You are now 26 years old. You are employed with a local retail company. You live with your parents and you support them financially. You also support your brothers and sisters who have lost their employment due to the COVID-19 pandemic. The advisory councillor in your area who has known you since you were small, say that you are a helpful person in the village and you contribute immensely to your religious and sports obligations. You promise not to reoffend. You seek a non-custodial sentence. It is also submitted by your counsel that the act was non-penetrative and was not inflicted on the victim over a long period of time. You are remorseful.

#### **MAXIMUM SENTENCE**

6. The maximum punishment that is imposable for indecent assault is up to 5 years imprisonment.

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

7. The sentencing tariff sentencing tariff for indecent assault is between 12 months to 4 years imprisonment [ Rokota v The State [2002] FJHC 168; HAA0068J.2002S ( 23 August 2002 ) ].

#### **Starting Point**

8. Considering the objective seriousness of the offence, I select 14 months imprisonment as the starting point.

#### **Aggravating Factors**

9. The victim was young.
10. You committed the offence in a public transport vehicle. Vulnerable members of the public especially children need to feel safe when taking this mode of transport.

11. I am sure that you made the victim feel uncomfortable as she had to sit there with you for a few minutes. You prevented her at first from leaving the seat when you pulled her skirt.
12. I increase your sentence to 21 months imprisonment.

#### **Mitigating Factors**

13. I see nothing in your case to indicate to me that you are remorseful. For instance, you have pleaded not guilty and convicted after trial.
14. However, you are a first offender and this offence is out of character for you in light of the assurance by people in your community.
15. You have a family to support.
16. This case too has been looming over you since March 2015.
17. I reduce your sentence to 12 months imprisonment.

#### **DISCRETION**

18. I can suspend the imprisonment sentence whether in whole or in part pursuant to section 26 ( 1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009** if the imprisonment term does not exceed 24 months imprisonment.
19. I am also mindful of section 4 of the **Sentencing and Penalties Act 2009** when considering the sentence in this case.
20. I place emphasis on the community's denunciation of this type of offending and the need for deterrence when sentencing the defendant.

**SUMMARY**

21. **KRISHNEEL MUDALIAR**, for indecently assaulting the 14 year old female victim, you are sentenced to 12 months imprisonment.
22. Your sentence will not be reduced any further as you did not spend any time in remand.
23. Although I am satisfied that over the past 5 years you have changed and you have demonstrated that this behaviour is out of character for you and that your family needs you now, the nature of the offence especially that it was committed in a public transport on an unsuspecting 14 year old female victim certainly calls for some immediate term of imprisonment and would meet the objective of deterrence and the community's condemnation of your perverted action.
24. Out of your 12 months imprisonment, I suspend 11 months imprisonment for the next 12 months.
25. Do not commit any other offence in the next 12 months because you risk having this 11 months imprisonment that is held in waiting, being activated.
26. The remaining 1 month imprisonment, you will serve that immediately from today.

28 days to appeal.



At TAVUA this 16<sup>th</sup> day of November, 2021

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Lisiate T.V. Fotofili

**Resident Magistrate**