

Particulars of the Offence (b)

WAILETIA MICE on the 23rd day of June 2012 at Naqarawai village in Navua, in the Central Division, had carnal knowledge of **MEREWALESI LIKUSELALA**, without her consent.

Alternative Count

Statement of Offence (a)

DEFILEMENT OF A YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE: contrary to section 215 (1) of the Crimes Decree No. 44 of 2009.

Particulars of the Offence (b)

WAILETIA MICE on the 23rd day of June 2012 at Naqarawai village in Navua, in the Central Division, had unlawful carnal knowledge of **MEREWALESI LIKUSELALA**.

2. After a full trial, this court concurred with the opinion of the majority of assessors that you are not guilty for the count of rape, but guilty for the alternative count. Now, you stand convicted for the offence of defilement of a young person between 13 and 16 years of age.
3. The evidence of Ms. Merewalesi Likuselala, the complainant was that you tried to insert your penis into her vagina on the night in issue. Nevertheless, you had admitted during your caution interview that you had penetrative sexual intercourse with Ms. Merewalesi on that day. The prosecution evidence amply demonstrated that the complainant was a willing participant to the events which took place in that night and the allegation of rape is possibly an afterthought. Section 215 (1) of the Crimes Decree No. 44 of 2009 covers the scope of having or attempts to have unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years. 'Consent' to the act is of no defence to this offence.
4. It was not disputed that the complainant was 15 years and 3 months and you were 23 years at the time of the incident. You both were attending the same

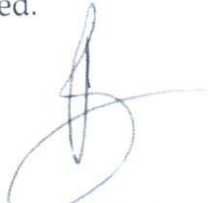
school, the complainant being a secondary school student and you a vocational training student.

5. The maximum sentence for the summary offence stipulated under section 215 (1) of the Crimes Decree is 10 years imprisonment. The tariff ranges from suspended sentence to 4 years imprisonment. (**Musuvanua v State** FJHC HAA 10 of 2014, 27th June 2014; **State v Sovalevu** FJHC HAC 315 of 2012, 5th March 2014)
6. Mr. Mice, you are a young first offender. You are still 25 years of age. You had been in remand custody in relation to this case since 2nd July 2012 to 7th February 2013 as you were denied bail. That is 7 months and 1 week. Then again you were ordered to be kept in custody on 4th October 2013 until the conclusion of the trial as you were arrested and brought to court on a bench warrant for your non-appearance in court on 16th May 2013. That period is around 1 year and 3 weeks to date. Therefore, the time you spent in custody for this case is almost 20 months.
7. The learned Counsel for the prosecution argued that the disparity in the ages of the complainant and you, as you been some years senior to her in school, aggravates the offending background because you took advantage of her potential vulnerability and exercised a degree of authority. He pointed out that there was significant trauma caused to the complainant's sexual organ with three lacerations with aggressive penile thrusting. He claimed that you did not commit this offence in the course of a 'virtuous relationship' but by your own desire without any care or feeling towards the complainant.
8. All the above proposed aggravating features have to be viewed or analyzed in the light of 'consent' of the complainant. It is no doubt that 'consent' is not a defence to be relied upon for the offence of defilement. Yet, the applicability of 'consent' as a strong mitigatory ground cannot be excluded in toto. It is indeed something to be considered at the sentencing stage as it is only a child under the age of 13 years is incapable of giving consent to such physical activities.
9. It is in this context this court recalls that Mr. Mice, you were acquitted from the first count of rape as it was the view of the court and the majority of assessors that the complainant was a consensual and willing participant to whatever the

sexually activity which took place on the night in issue. Thus, this court does not agree with the prosecution that the above stated aggravating features existed or in fact should be considered when sentencing.

10. In the absence of aggravating factors, this court strongly believes that a sentence of 20 months imprisonment would reflect the gravity of the offence that you are been convicted of. Thus, I impose you a sentence of 20 months imprisonment. In terms of section 24 of the Sentencing and Penalties Decree No. 42 of 2009, any period of time the offender was held in custody prior to the trial of the matter can be regarded as a period of imprisonment already served by the offender.
11. Therefore the 20 months period you already spent in custody is hereby ordered to be compensated for your final sentence of 20 months imprisonment. Prison Authorities are ordered to release you from their custody today itself after the formal procedure of releasing convicts been followed.




Janaka Bandara
Judge

At Suva

Solicitors

Office of the Director of Prosecution for State
Office of the Legal Aid Commission for Accused