

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 14 of 2015

STATE

v.

EPELI TUTE

Counsel: Ms. S. Tivao with Ms. Navia for State
Mr. K. Vuki and Mr. P. Tawake for Accused

Dates of Hearing: 18th, 19th, 20th July 2016

Date of Summing Up: 22nd July 2016

Date of Judgment: 25th July 2016

Date of Sentence: 27th July 2016

SENTENCE

[Name of the victim is suppressed. The victim will be referred to as ['R.R']]

1. Epele Tute, you were charged with the offence of Rape.

First Count

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

EPELI TUTE on the 9th day of November 2014 at Vunivasa in Nabuna village, on Koro Island in the Central Division, had carnal knowledge of 'R.R.' without her consent.

2. After trial you were convicted for the lesser offence of defilement.

3. The brief facts of the case were as follows:

You, with the permission of 'R.R.'s father, took 'R.R.' to Vunivasa District School to collect mangoes you had already gathered. Then you took her further away, took her clothes off and had sexual intercourse with her. She was 14 years old and you were 29 years old.

4. The offence of defilement is having sexual intercourse with any person being of or above the age of 13 years and under the age of 16 years.

5. The maximum punishment prescribed for defilement is 10 years imprisonment. Sentencing tariff for defilement ranges between a suspended sentence and four years imprisonment (**State v. Eremasi Rainasau HAM 203 of 2014**).

6. In Rainasau (supra), Hon. Justice Madigan referring to cases **Rokowaqa HAA 37/2004** and **Kabaura HAC 117/10** stated:

"The tariff for defilement of a girl between 13 and 16 years of age is a sentence ranging from suspended sentence for protagonists in a "virtuous relationship" to four years imprisonment with the higher end of the range being for offenders who are older and or in a position of trust."

7. In case of **The State v. Pita Vetaukula** (HAC 46 of 2013) where the accused was a Turaga-ni-koro who pleaded guilty for defilement of a 15 year old girl in the village was sentenced to 18 months imprisonment by Hon. Justice Goundar.

8. In case of Pita (supra) Hon. Justice Goundar said:

“The maximum penalty for defilement is 10 years imprisonment. The tariff is between suspended sentences to 4 years imprisonment. (Elia Donumainasava v. State [2001] HAA 32/01S, 18 May 2001). Suspended sentences are appropriate in cases of non-exploitative relationship between persons of similar age. Custodial sentences are appropriate in cases of sexual exploitation of younger girls by old men or men who hold positions of authority over the girls.”

9. In the instant case the aggravating factors are, that you breached the trust that was reposed on you by the father of the complainant when he allowed you to take his 14 years old daughter to collect mangoes. You also took advantage of the vulnerability of the complainant when she was alone with you in an isolated area.

10. The main mitigating factor is that you are a first offender. Your personal background as mentioned by your counsel is also taken into consideration.

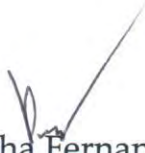
11. I pick 2 years as the starting point. I increase your sentence by 2 years for the aggravating factors. I deduct 2 years for the mitigating factors. Now your sentence is 2 years imprisonment.
12. Now I will consider whether the sentence of 2 years imprisonment should be suspended. I take into account that you were 29 years old and the victim was 14 years old at the time of the offence.
13. In case of Pita (supra), Justice Goundar referring to suspending of the sentence of 18 months imprisonment imposed in that case said,

“Younger girls who have entered puberty and who are experiencing social and hormonal changes are more vulnerable to sexual advances by men with authority over them. The courts have a duty to protect the young girls from any form of sexual exploitation. In cases of sexual exploitation of young girls, the primary purpose of the sentence is general deterrence. Rehabilitation of the offender is a secondary purpose. For these reasons, I am not convinced that a suspended sentence will deter others who hold similar position of authority from sexual exploiting younger girls. Your sentence will not be suspended.”

14. The instant case is not one of non-exploitative relationships between a girl and a boy of similar age. A custodial sentence is appropriate. Since the sentence will not be suspended.

15. Your final sentence is 2 years imprisonment. Your non-parole period will be 1 year and 4 months.




Priyantha Fernando
Judge

At Suva

27th July 2016

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for Accused.