

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 38 of 2017

STATE

V

STAN DAVIDSON RAMERE

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|---------------------------|---|---|
| Counsel | : | Ms. Dharshani Kumar for the State Mr. Romanu Vananalagi for the Juvenile |
| Dates of Trial | : | 9 & 11 October 2018 |
| Summing Up | : | 12 October 2018 |
| Judgment | : | 12 October 2018 |
| Date of Punishment | : | 19 October 2018 |

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "MW".

PUNISHMENT

[1] Stan Davidson Ramere (Stan), in terms of the Amended Information filed by the Director of Public Prosecutions (DPP), you were charged, along with Eparama Warua, with the following offences:

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Act of 2009.

Particulars of Offence

STAN DAVIDSON RAMERE, on 4 June 2011, at Labasa in the Northern Division, penetrated the vagina of **MW**, with his penis, without her consent.

COUNT 2

Statement of Offence

AIDING AND ABETTING: Contrary to Section 45 and 207 [1] and [2] [a] of the Crimes Act of 2009.

Particulars of Offence

EPARAMA WARUA, on 4 June 2011, at Labasa in the Northern Division, aided and abetted **STAN DAVIDSON RAMERE** to penetrate the vagina of **MW**, with his penis, without her consent.

- [2] Count 1 was the relevant charge against you.
- [3] You pleaded not guilty to charge against you and the ensuing trial was held over 2 days.
- [4] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you not guilty of Rape. However, by their unanimous decision the three Assessors found you guilty of the lesser or the alternative charge of Defilement of a Young Person between 13 and 16 Years of Age (Defilement), contrary to section 215(1) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [5] Having reviewed the evidence, this Court was of the opinion that the unanimous decision of the Assessors in finding you guilty of Defilement was justified. In the circumstances, Court found you guilty and convicted you of Defilement.
- [6] At the time of the incident, you were 15 years of age, and as such a juvenile.
- [7] In terms of the Juveniles Act (as amended) a "juvenile" has been defined to mean a person who has not attained the age of eighteen years, and includes a child and a young person. A "child" means a person who has not attained the age of fourteen years; while a "young person" means a person who has attained the age of fourteen years, but who has not attained the age of eighteen years.
- [8] Furthermore, Section 20 of the Juveniles Act stipulates that *"The words "conviction" and "sentence" shall not be used in relation to juveniles and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of juvenile persons, be construed as including a reference to a person found guilty of*

an offence, a finding of guilt or an order made upon such a finding, as the case may be."

- [9] In terms of Section 20 of the Juveniles Act, it is clear that the words "conviction" and "sentence" shall not be used in relation to juveniles. Thus the reference made by me in my Judgment, dated 12 October 2018, that you have been "convicted" has been made '*per incuriam*'. Court could only have made a finding of guilt against you.
- [10] Pursuant to the said finding of guilt, I now proceed to impose the punishment against you.
- [11] Section 30 of the Juveniles Act imposes certain restrictions on the punishments which Courts could order against juvenile offenders. The Section provides that:

"(1) No child shall be ordered to be imprisoned for any offence.

(2) No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A young person shall not be ordered to be imprisoned for more than two years for any offence."

Emphasis is mine.

- [12] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the punishment to be imposed on you.
- [13] In terms of Section 215 (1) of the Crimes Act, *"(1) A person commits a summary offence if he or she unlawfully and carnally knows 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."*
- [14] The offence of Defilement in terms of Section 215 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.
- [15] As at 4 June 2011, the complainant was 13 years and 5 months old. Her date of birth is 12 January 1998.
- [16] The applicable tariff for the offence of Defilement is a suspended sentence to 4 years imprisonment. The law and tariff in relation to the offence of Defilement remains the same as found in the Penal Code (Chapter 17).

- [17] In *Livina Namami v. The State* [1995] 41 FLR 152 (17 July 1995); where the accused appellant appealed the sentence of 2½ years imprisonment on a charge of Defilement of his girlfriend, aged 15½ years, His Lordship Justice Fatiaki held:

".....On the facts of this case there can be little doubt that this was a case of "a virtuous friendship (between two young people) that ended with them having sexual intercourse with one another." Certainly it falls within that category of offending where "... it is inappropriate to pass sentences of a punitive nature."

In this case the learned trial magistrate sentenced the appellant on an incorrect factual basis in that the complainant was not then under 15 years of age at the time of the offence. Furthermore no consideration appears to have been given to the minimal age difference between the parties and finally, as conceded by learned State counsel, there is no record that the learned trial magistrate was aware that the appellant was a student at the time of sentencing him.

Insofar as it may be possible to give some guidance in the matter, on a charge of Defilement under Section 156(1) (a) of the Penal Code (Cap. 17), this Court is firmly of the view that in the absence of aggravating factors and subject to a favourable Social Welfare Officer's report, where the age difference between the accused and the complainant is less than 4 years, a non-custodial sentence is appropriate.

In the light of the above and for the foregoing reasons the appeal was allowed and the appellant and his father were ordered to enter into a recognizance of \$100 to keep the peace and be of good behaviour for a period of 12 months and further conditioned that the appellant was not to associate with the complainant."

- [18] In *State v Kabaura* [2010] FJHC 280; HAC117.2010 (9 August 2010); His Lordship Justice Goundar said:

*"The tariff for this offence is from a suspended sentence to four years imprisonment; suspended sentences reserved for virtuous friendship offending while the higher side of the range is for offenders who are older and in position of trust with the victim (*Etonia Rokowaqa v. State Criminal Appeal No. HAA37 of 2004*); *Elia Donumainasuva v. State Criminal Appeal No. HAA032 of 2001*)."*

- [19] This tariff was followed by His Lordship Justice Madiagan in *State v Raovuna* [2011] FJHC 59; HAC 021.2010 (10 February 2011) where he stated:

"The facts at trial revealed that in the last week of May 2010, you (the accused) had gone to stay with your uncle at Seaqaa. While there you came into contact with the victim Katarina and you and she had several meetings over 3 days and you each considered the other to be a romantic friend. On the evening of the 30th May 2010, you and Katarina found yourselves at a house in the settlement where sexual intercourse took place between you. The assessors and the court were obviously of the view that it was consensual."

- [20] Similarly, in **State v Raibevu** [2012] FJHC 1040; HAC27.2011 (27 April 2012); His Lordship Justice Madiagan held:

".....the usual range of sentences (for Defilement) is from a suspended sentence for protagonists in a "virtuous relationship" whilst the higher end of the range is for offenders who are older and in a position of trust. (Rokowaga CA 37/2004, Kabaura HAC 117/2010). In the case of Donumainasuva CA 32/2001, Shameem, J said "The offence is clearly designed to protect young girls who have entered puberty and experiencing social and hormonal changes, from sexual exploitation."

- [21] In the case of **State v Vetaukula** [2014] FJHC 500; HAC46.2013 (8 July 2014); the accused, who was the turaga-ni-koro of the village, and who pleaded guilty to the defilement of a 15 year old girl in the same village, was sentenced to 18 months imprisonment. Goundar J 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 32/015, 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."

- [22] It is the opinion of this Court, that considering the facts of this case, there are no aggravating factors.

- [23] Stan, in mitigation you have submitted as follows:

- (i) That you are a first offender and that there have been no previous findings of guilt recorded against you to date. The State too confirms this position.
- (ii) That you fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.

- (iii) You admitted to the offence whilst testifying in Court. Thus, you have acknowledged that what you did was wrong and inexcusable. You have sought forgiveness from this Court and have assured that you will not re-offend. You have submitted that you are gravely remorseful of your actions.
- (iv) There has been an unfortunate history of delay prior to this matter being transferred to the High Court and taken up for trial.

[24] Considering all the aforementioned factors, and the restrictions placed on this Court in terms of the provisions of Section 30(3) of the Juveniles Act, I impose on you a punishment of 12 months imprisonment.

[25] The next issue for consideration is whether your punishment should be suspended.

[26] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[27] Stan, you are now 22 years of age. You have admitted that what you did was wrong, and taken full responsibility for your actions. You have also promised that you would lead a crime free life if you are granted a non-custodial punishment.

[28] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse....."

[29] Her Ladyship Madam Justice Shameem also held In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006);

"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."

[30] I have considered the following circumstances:


- You are a young offender;
- You have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your punishment. Accordingly, I suspend your punishment for a period of 3 years. The juvenile is advised of the effect of breaching a suspended punishment.

[31] In the result, your final punishment would be 12 months imprisonment, which term of imprisonment is suspended for a period of 3 years.

[32] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 19th Day of October 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitors for the Juvenile : Vananalagi & Associates, Suva.