

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
(Sitting as a Juvenile Court)

CRIMINAL CASE NO. HAC 269 OF 2018

BETWEEN : **STATE**

AND : **G.W.**
(a juvenile aged 11 years 10 months)

Counsel : ***Ms L. Bogitin for the State***
Ms. M. Ratidara(LAC) for Juvenile

Date of Hearing : *27th of August 2018*
Date of Sentence : *31st of August 2018*

(Names of the Juvenile and the victim/Complainant are suppressed as both are under the age of 13 years)

PUNISHMENT

- [1] On the 27th of August, in this Court, the **juvenile** entered an unequivocal plea of guilty to a count of **rape** contrary to section 207(1) and (2)(c) and (3) of the Crimes Act 2009.
- [2] The Summary of facts read over and explained to him and he agreed and admitted those to be true and correct.
- [3] The Summary of facts reveal that on the 31st of January 2018, at Vatoa Village sometime in the afternoon, the juvenile was with the complainant and three other friends. They were having a rain bath beside the Vatoa Methodist Church.

- [4] The juvenile, the complainant and their three other friends then went to the Church Porch where the juvenile told complainant to suck his penis. The juvenile then took off his own pants and inserted his penis into the mouth of the complainant in front of their other friends. They each went home following this.
- [5] One of the boys told his head teacher and the matter was reported to the Police.
- [6] Upon hearing the **juvenile** plead to the charges and agreeing to the facts, this Court (mindful of section 20 of the **Juvenile Act** Cap 56) found the charges proved against him.
- [7] Though it would have been better if a social welfare report is called, time constraints does not permit us to do so now.
- [8] The maximum punishment for the offence of Rape is Life Imprisonment.
- [9] The tariff for rape of a child is between 10 to 16 years of imprisonment. (**Anand Abhay Raj vs State** [2014] FJSC 12; CAV0003.2014).
- [10] However, Section 30 (2) and (3) of the **Juvenile Act** restrict the court to a maximum term of two years imprisonment for a juvenile offender. Therefore, the court in sentencing juvenile offender for crimes of this nature, have to consider the seriousness of the offences of this nature as well as the purpose of the legislature not to have juvenile imprisoned for more than two years.
- [11] The aggravating factors against the juvenile are;
- i) Disparity in Age:- The Complainant/Victim was 5 years and 10 months old and the Accused/Juvenile was 11 years and 10 months old at the time of the incident.
 - ii) Breach of Trust:-The victim and the Juvenile are from the same village and related to each other. The juvenile breached the victims trust by committing this act upon him.
 - iii) Taking advantage of the Victim's Vulnerability and Naivety:- Victim was younger to the Juvenile by 6 years and this act was done in front of 3 others.

- [12] The mitigating factors in favour of the juvenile are;
- i) Truly remorseful & seeks forgiveness: - It is repeatedly submitted on juvenile's behalf and also the early plea of guilt confirms as such.
 - ii) Being co-operative with the police.
 - iii) He was only 11 years and 10 months old at the time of the incident.
 - iv) He is a first time offender.

[13] I take 12 months as the starting point and for aggravating factors I add another 3 months. I deduct 4 months from it for mitigating factors. I further deduct 4 months for your early plea of guilt and also in lieu of the single day you have spent in remand. Therefore, juvenile's total term to be served would be 7 months.

[14] In consideration of all the material before me, I am of the view that possibilities of this juvenile's rehabilitation are high. In the circumstances; I order that this term of 7 months be suspended for a period of two years.

[15] In addition, I order that he be placed on probation for a term of two years from today and the terms of the probation to be as follows:

1. To live and study where the probation officer directs.
2. To meet his probation officers regularly at times dictated by the officers.
3. That any breach of conditions laid down by the officers be reported to this Court.
4. That he be appropriately counselled and offered further education.

[16] The suspended sentence and probation order are both explained.

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Chamath S. Morais
JUDGE

Solicitors for State : ***Office of the Director of Public Prosecutions***
Solicitors for Juvenile : ***Legal Aid Commission, Suva***