

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 205 of 2018

[CRIMINAL JURISDICTION]

STATE

V

ANARE DAVUILEVU

Counsel : Ms. L. Bogitini for State
Ms. L. David for Accused

Sentenced on : 10 May 2019

SENTENCE

1. Anare Davuilevu, you stand convicted of one count of defilement contrary to section 215(1) of the Crimes Act 2009 ("Crimes Act") upon you pleading guilty to the relevant charge.
2. You were initially charged with one count of rape and the case was fixed for trial from 06/05/19 to 10/05/19. On 06/05/19, the charge was amended to defilement by the prosecution and you pleaded guilty to the charge on the same day.
3. You have admitted to the following summary of facts:
 1. *The accused is Anare Davuilevu of Sawakasa village, Tailevu. He was born on the 21st of November, 1999. He was 18 years old at the time of the alleged offence. The accused was a year 11 student at Ratu Kadavulevu School at that time.*
 2. *The complainant in this matter is Kyrie April Lalauvaki, 14 years of Makita road, Narere. She was born on the 1st of April, 2004. She was 14 years old at*

the time of the alleged offence. The complainant was a year 9 student attending Gospel High school at the time.

3. *The complainant and the accused are not related. The accused sister is the neighbor of the complainant. The accused went to stay at his sister's house to attend the secondary schools rugby tournament which was being held in Suva around that time.*
 4. *The accused and the complainant would often see each other around their neighbourhood area before the alleged time of offence.*
 5. *On the 6th of May, 2018, sometime between 4pm to 5pm the complainant walked out of her home and went towards the accused sister's house. It was then when she met the accused. The complainant and the accused proceeded to have sexual intercourse, that is, the accused inserted his penis into the complainant's vagina.*
 6. *At the alleged time of the offence, the accused was aware of the complainant's age.*
 7. *The complainant informed her friend Sisilia Tuqota the next day at school that she was no longer a virgin. Eventually the school principal came to hear of this. The complainant's parents were notified and the matter was reported to the police.*
4. You were about 18 years and 06 months old at the time the above offence was committed. The victim was about 14 years and 01 month old at that time.
 5. Pursuant to section 215(1) of the Crimes Act 2009 read with section 3(4) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), the maximum punishment for defilement is an imprisonment for 10 years. In the case of *State v Mawi* [2019] FJHC 324; HAC17.2017 (12 April 2019) I concluded that the sentencing tariff for defilement should be an imprisonment term between 02 years to 08 years.
 6. I would select 02 years imprisonment as the starting point of your sentence.
 7. The fact that the complainant at the time of offence was only about one year older than the lower end of the age limit applicable to the offence of defilement (13

years), enhances the seriousness of the offending in this case. The prosecutor submitted that you have exploited the victim's vulnerability and naivety and this should be regarded as an aggravating factor. Your counsel argued that there was no such exploitation. In my view, based on the complainant's age at the time of offence, an inference could in fact be drawn that you did exploit her naivety and vulnerability. The age difference between you and the complainant is 04 years. I would consider these as aggravating factors.

8. However, I am mindful of the fact that you were around 18 years and 06 months old at the time of offence. According to the summary of facts, the two of you knew each other. The incident took place in the house you were residing at. The complainant came to that house voluntarily. Given these circumstances, I would only add 06 months to your sentence in view of the above aggravating factors. Now your sentence is an imprisonment term of 02 years and 06 months.
9. You are a young first offender. I would consider this as a mitigating factor to reduce your sentence by 06 months. Now your sentence is 02 years imprisonment.
10. In view of your guilty plea, I would grant you a discount of one-fourth of your sentence. Accordingly, a period of 06 months will be deducted.
11. I hereby sentence you to a term of 18 months imprisonment.
12. Section 24 of the Sentencing and the Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."
13. It is submitted that you have been in custody in view of this case from 14/05/18 to 04/08/18. Accordingly, you have spent about 02 months and 21 days in

custody in relation to this matter. In view of the provisions of section 24 of the sentencing and Penalties Act the period you have been in custody for this case shall be regarded as time already served by you.

14. In the result, you are sentenced to 18 months imprisonment. Considering the period spent in custody, the time remaining to be served is an imprisonment term of 15 months and 09 days.
15. You are 19 years old. It is submitted that you were a Year 11 student before you were arrested for this matter and now you intend to pursue higher education.
16. Considering the facts of this case and your personal circumstances I have decided to suspend your remaining sentence for a period of 02 years.
17. The court clerk will explain you the effects of a suspended sentence.
18. Thirty (30) days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

Solicitors:

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