

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 56 of 2019

[CRIMINAL JURISDICTION]

STATE

V

IN (JUVENILE)

Counsel : Ms. S. Navia for State  
Ms. L. David for Accused

Date of Sentence : 12 June 2019

[The names of the complainant and the juvenile offender are suppressed. Accordingly, the complainant will be referred to as "LT" and the offender as "IN". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said complainant or the offender.]

PUNISHMENT

1. *IN*, you stand convicted for the following offence;

*Statement of Offence*

**RAPE:** contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**IN** between the 1<sup>st</sup> day of November 2018 and the 30<sup>th</sup> day of November 2018 at Sigatoka in the Western Division penetrated the vagina of **LT**, a child under the age of 13 years with his finger.

2. You were convicted based on your plea of guilty and the summary of facts you admitted in court. According to the summary of facts you have admitted, the relevant facts are as follows;

1. *"The offender in this matter is IN (hereinafter referred to as IN "the offender") (DOB 27/10/01), a 17 year old student of Toga Village, Naqalimare, Sigatoka in the Western Division.*
2. *The Victim in this matter is L... T... (hereinafter referred to a "LT") (DOB 15/06/13), a 5 year old student also Toga Village, Naqalimare, Sigatoka in the Western Division.*
3. *Between the 1<sup>st</sup> and the 30<sup>th</sup> day of November, 2018, LT was staying at her aunt's home in Toga village, Sigatoka as she was attending Kindergarten.*
4. *On one of the nights in November 2018, LT went to her friend's house to collect her slippers. LT was wearing a shorts and a t-shirt.*
5. *Whilst LT was going to her friend's house on the above said night, the offender, upon seeing LT, had called out to and had then approached LT after which he took her towards the village hall by holding LT's left hand. LT had refused to go with the offender, however, the offender forced LT to go with him by pulling her hand.*
6. *The offender pulled LT inside the village hall where he forcefully pulled down LT's shorts and panty and then lay her down on the floor.*
7. *Whilst LT lay on the floor the offender then forcefully inserted two of his fingers into LT's vagina causing LT to feel the pain and she started to cry.*
8. *LT tried to shout however, the offender told her not to shout or tell anyone about what he had just done to her.*
9. *LT tried to free herself and pull up her shorts up but the offender pulled her shorts down again. LT managed to free herself and then she ran out of the village hall while pulling up her shorts where she was chased by the offender.*
10. *LT ran back to her aunt's home calling out "Nene" (meaning mum) and upon reaching her aunt's place she found her aunt at home. LT turned and saw the offender turning around and going away.*
11. *LT later informed her grandmother about the offender inserting his two fingers into her vagina.*
12. *LT was medically examined on 28<sup>th</sup> December 2018 where the medical findings showed that her hymen was intact (attached: medical Report of LT).*

13. *The offender was arrested on 07 March 2019 and interviewed under caution on 08 March 2019, in the presence of his mother. The offender cooperated with investigations and voluntarily admitted that sometime in November 218, when LT was in kindergarten, he had taken her to the village hall where he had pulled down her pants and panty and had then inserted 02 of his fingers into LT's vagina (Q&A 09-23). The offender admitted that LT had told him she felt pain when he had inserted his fingers into her vagina and that he had been inside the village hall with LT for about 04 to 05 minutes (Q&A 24-25) (attached: Records of Interview of IN, typed in English and handwritten in I-Taukei).*

14. *The offender was charged with 01 count of rape contrary to section 207(1) and (2)(b) and (3) of the Crimes Act 2009. The offender has nil priors."*

3. The maximum sentence for the offence of rape under section 207(1) of the Crimes Act is imprisonment for life and the sentencing tariff for rape of a child is a term of imprisonment between 11 to 20 years. (See *Aitcheson v State* [[2018] FJSC 29; CAV0012.2018 (2 November 2018)). However, given the provisions of section 30(3) of the Juveniles Act, the maximum term of imprisonment that could be imposed on you is 02 years.

4. The Prosecutor has taken steps to file extensive written submissions to assist this court to determine your punishment. In the said submissions, the prosecutor has provided statistics released by the Office of the Director of Public Prosecutions under the heading 'ODPP Rape and Sexual Offences Statistics'. These statistics cover the period from May 2015 to 2018. The prosecutor submitted that over the recent years the number of child rape victims has increased. However, the prosecutor also informed the court when inquired that the said statistics are based on the complaints received.

5. In the case of *Kumar v State* [2018] FJSC 30; CAV0017.2018 (2 November 2018) Keith J said thus;

*[38] The impetus for change. Child sexual abuse is said to be on the increase in Fiji. The Office of the Director of Public Prosecutions began releasing statistics on crimes of a sexual nature in May 2015. Those statistics show that 138 indictments were filed in the High Court between May and December 2015 for*

*offences of a sexual nature. The victims in 87 of those cases were children and juveniles. Those numbers had increased to 228 indictments in 2016, in which 150 were children and juveniles, and to 444 indictments in 2017, in which 130 were children and juveniles. The statistics for January to September 2018 show a similar trend. 185 indictments were filed in the High Court during those 9 months for offences of a sexual nature. The victims in 111 of those cases were children and juveniles, of whom 65 were under the age of 13. It is important to note that these statistics are not limited to the rape of children and juveniles. They also include other offences of a sexual nature against children and juveniles - attempted rape, abduction with intent to rape, abduction with intent to have carnal knowledge, indecent assault, defilement and sexual assault.*

*[39] Without statistics for years prior to 2015, it is not possible to tell whether offences of child sexual abuse are on the increase. Indeed, there is a school of thought that child sexual abuse in Fiji is currently no worse than it always has been, and that such anecdotal evidence as there may be of an increase in recent years is attributable to a greater willingness for victims to come forward, and to a better understanding on the part of the police of offences of this kind which has resulted in them appearing to complainants to be more sympathetic to them than might previously have been the case. But what is unquestionably the case is that child sexual abuse is very prevalent in Fiji. Such statistics as we have tell their own story. Indeed, the statistics only include those cases where the police have become involved and where the prosecuting authorities have decided that the evidence is sufficiently strong to justify the filing of indictments.*

6. I have noted that the statistics provided in the instant case is an updated version of the statistics submitted before the Supreme Court in *Kumar* (supra). In the said case which was heard in October 2018, the period covered appears to be only until September 2018. The statistics submitted in this case covers the whole of 2018. Accordingly, the total number of complainants of sexual offences in 2018 was 204, out of which 141 complainants were under the age of 18 years. I have taken the liberty of using the term 'complainants' instead of 'victims' which is the term used in the said statistics for the reason that those figures are based on the complaints made and not on convictions.
  
7. As I pointed out to the prosecutor during the sentencing hearing, these statistics do not include the number of *nolle prosequis* entered and the number of acquittals. Without that information, the number of complaints alone will not give a complete picture of the situation. Moreover, as Keith J pointed out in *Kumar* (supra) it is not possible to say for certain that the child sexual abuse

cases are on the increase without the statistics for years prior to 2015. However, I do take note of the fact that child sexual abuse cases are prevalent.

8. I consider the following as aggravating factors in this case;
  - a) The age difference between the you and the victim which is 12 years;
  - b) You have used force on the victim where you forcefully took her to the village hall to commit the offence; and
  - c) You exploited the victim's vulnerability.
  
9. I consider the following as your mitigating factors;
  - a) You are a first offender;
  - b) You are remorseful;
  - c) You cooperated with the police; and
  - d) You have entered an early guilty plea.
  
10. It was submitted that you live with your elderly parents, two siblings and a niece. You are said to be engaged in farming to financially support your family.
  
11. By entering an early guilty plea, you have prevented the child victim from having to give evidence about her miserable experience before this court. Your conduct before this court indicated genuine remorse.
  
12. You were 17 years old when you committed the offence and the victim was just 05 years old. Your counsel during her oral submission stressed the fact that you are a juvenile and that this court should focus on your rehabilitation and therefore should impose a suspended sentence. The prosecutor quite correctly pointed out that the victim in this case is also a juvenile who was 5 years old at the time of offence. In a criminal case the accused's rights are emphasized over and over again to an extent an independent observer may perceive that the victim and his/her rights are given minimal or no importance at all. However, section 4(2)(e) of the Sentencing and Penalties Act requires the sentencing court

to have regard to the impact of the offence on the victim of the offence and the injury, loss or damage resulting from the offence.

13. Therefore, in deciding the appropriate punishment, this court is challenged with the difficult task of striking a balance between your best interest as a juvenile offender and the impact of your conduct on the victim. Aluthge J in the case of *State v T* [2019] FJHC 122; HAC53.2014 (22 February 2019) expressed similar sentiments. His Lordship said this at paragraph 10;

*Deciding on an appropriate sentence that is commensurate with the circumstances of offence and the personality of each one of you is a challenging task. It has become more challenging to decide a suitable punishment for two juveniles when their individual and societal needs for deterrence come into play. Fiji's juvenile justice system places a special emphasis on diversion, restoration and rehabilitation in its dealings with young people. This emphasis is backed by several international instruments to which Fiji is a signatory, which require the prioritization of diversion and the best interests of the child and incarceration as an absolute last resort for the minimum time necessary (Convention on the Rights of the Child arts 37(b), 40(3)(b); Beijing Rules, rules 11, 17.1(b)-(c), 19.1). Under these instruments, criminal sanctions must serve some rehabilitative or restorative function (Beijing Rules, Rule 17.1(b)). As Fiji is signatory to the Convention on the Rights of the Child, Courts in Fiji are required to act in accordance with provisions of the Convention unless legislation specifies otherwise.*

14. Given the prevalence of child sexual abuse offences, I should also ensure that a clear message is communicated to you and to those with similar impulses that the court and the community denounce your conduct.
15. Considering all the circumstances, had you not pleaded guilty to the offence, I would have ordered you to serve a period of 18 months. In view of your early guilty plea I would decrease that term to 12 months. Accordingly, I hereby order that you should serve a term of 12 months.
16. I note that you will be turning 18 on 27/10/19. I would therefore, order that you should be detained at the Fiji Juvenile and Rehabilitation Centre ("Centre") till 27/10/19 and the remaining period of 07 months and 15 days is hereby suspended for 03 years.

17. I order that you should be referred for appropriate counselling during the time you are detained at the Centre.
  
18. Thirty (30) days to appeal to the Court of Appeal.



  
Vincent S. Perera  
JUDGE

**Solicitors;**

Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Juvenile