

**IN THE HIGH COURT OF FIJI AT SUVA**

CASE NO: HAC. 336 of 2018

[CRIMINAL JURISDICTION]

**STATE**

**V**

**ANTONIO MATIA DINONO**

**Counsel** : Ms. S. Swastika for State  
Ms. S. Hazalman for Accused

**Sentenced on** : 05 September 2019

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

**SENTENCE**

1. Antonio Matia Dinono, you stand convicted of the offence of defilement contrary to section 215(1) of the Crimes Act 2009 ("Crimes Act") upon pleading guilty to the relevant charge. The charge reads thus;

*Statement of Offence*

**DEFILEMENT OF YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE:** contrary to section 215 (1) of the Crimes Act 2009.

*Particulars of Offence*

**ANTONIO MATIA DINONO** on the 23<sup>rd</sup> of August, 2018 at Navuso

Agricultural School, Nausori, in the Eastern Division, had unlawful carnal knowledge of **SR**, a young person being the age of 13 years 2 months old.

2. You have admitted the following summary of facts;

**BRIEF BACKGROUND:**

*It was alleged that on the 23<sup>rd</sup> of August 2018 in Navuso Agricultural School Compound in Nausori, ANTONIO DINONO penetrated the vagina of SR with his penis whilst SR was only 13 years 2 months old.*

*ANTONIO DINONO was 19 years old at the time of the offence and is related to the complainant. The accused person is the paternal cousin of the complainant and they all reside in Navuso Agricultural School Compound.*

**OFFENCE**

*On the 23<sup>rd</sup> day of August 2018 in Navuso Agricultural School Compound in Nausori, ANTONIO DINONO penetrated the vagina of SR with his penis whilst SR was only 13 years 2 months old.*

*On this date around 7pm, the complainant went to the accused person's residence to look for her brother. Upon reaching the accused person's residence, she saw her brother having dinner and decided to wait for him.*

*Whilst waiting, the accused then called the complainant at the back of the kitchen and kissed her. The accused then asked the complainant to follow him into the cassava plantation to continue kissing. After kissing at the cassava plantation, the accused uttered the words "au via kaba" meaning I want to have sex.*

*The accused then removed the complainant's blue skirt, black tights and white panty and inserted his penis into the complainant's vagina. The accused thereafter dropped the complainant home through a shortcut. At the time of the alleged offence, the accused person knew that the complainant was under the age of 16 as they are related to each other and reside in the same village.*

*The complainant informed her mother of what had happened the same evening and the matter was reported.*

**CAUTION INTERVIEW AND THE CHARGE:**

*The accused was then interviewed under Caution on the 27<sup>th</sup> of August 2018.*

*On the 20<sup>th</sup> of June 2019, the accused through his solicitor highlighted to the court of his intent of pleading guilty if the charge was to be amended to Defilement of young persons between the age of 13 and 16.*

*On the 5<sup>th</sup> of August 2019, the information was amended to one count of Defilement of young persons between the age of 13 and 16 contrary to section 215 (1) of the Crimes Act 2009. The accused had pleaded guilty to the amended charge.*

3. You were 19 years old at the time the above offence was committed. The victim was only about 13 years and 2 months old at that time. You have had unprotected sexual intercourse with the victim with her consent. The facts does not disclose whether there was ejaculation.
4. 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.
5. 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 select 02 years imprisonment as the starting point of your sentence.
7. I consider the following as the aggravating factors relevant to you in this case;
  - a) You are related to the victim being her paternal cousin. There is a breach of trust;
  - b) The victim was 13 years and 02 months old;
  - c) The age difference between you and the victim is 06 years;



- d) You had unprotected sexual intercourse with the victim at a cassava plantation around 7.00pm; and
  - e) You took advantage of the victim's vulnerability and naivety.
8. In view of the aggravating factors outlined above, I would add 05 years to the starting point. Now your sentence is an imprisonment term of 07 years.
9. I consider the following as your mitigating factors;
- a) You pleaded guilty to the offence;
  - b) You are a young first offender;
  - c) You are remorseful; and
  - d) You have cooperated with the police.
10. In view of the aforementioned mitigating factors, except for the guilty plea, and having special regard to your age and the fact that you are a first offender, I would deduct 03 years of your sentence. Now your sentence is an imprisonment term of 04 years.
11. You were initially charged with the offence of rape and you pleaded not guilty to the said charge when you were arraigned.
12. The court was informed on 27/11/18 that you have apologised to the victim's father. The counsel for the prosecution also had informed on the same day that they are considering the offence of defilement. According to the transcript of the proceedings on 04/11/18, it appears that your counsel had in fact informed court that there is a possibility of you pleading guilty to defilement if the charge (filed before the Magistrate Court) is brought down to defilement. Although the Information has been filed on 18/02/19, your plea was taken on 08/04/19 as the prosecution had been considering whether to amend the charge to defilement. It is evident from the

court record that you have maintained from the inception that you had consensual sexual intercourse with the victim.

13. In view of the circumstances your guilty plea shall be regarded as an early plea for the purpose of sentencing you. I consider it appropriate to grant you a discount of one-fourth and I would deduct a period of 01 year from your sentence.
14. I hereby sentence you to a term of 03 years imprisonment. Pursuant to the provisions of section 18 of the Sentencing and Penalties Act I order that you are not eligible to be released on parole until you serve 02 years of that sentence.
15. In fixing your non-parole term, I have considered your personal circumstances and the fact that you are a first offender.
16. 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."*
17. I note that you have been in custody in view of this case from 27/08/18 until you were granted bail on 04/12/18. Thereafter you were in remand from 07/08/19 to date, pending your sentence. Accordingly, you have spent about 04 month and 05 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.

18. In the result, you are sentenced to 03 years imprisonment with a non-parole period of 02 years. Considering the period spent in custody, the time remaining to be served is;

Head Sentence - 02 years; 07 months and 25 days

Non-parole period - 01 year; 07 months and 25 days

19. Considering the fact that you accepted the responsibility for your actions, the fact that you had displayed remorse from the inception, the fact that you are 19 years old and the fact that you have technically served more than 04 months of your sentence, I have decided to suspend the aforementioned remaining period of your sentence in terms of the provisions of section 26 of the Sentencing and Penalties Act.
20. The aforementioned remaining sentence is accordingly suspended for a period of 03 years.
21. The court clerk will explain you the effects of a suspended sentence.
22. Thirty (30) days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera". The signature is stylized and includes a long horizontal stroke at the end.

Vinsent S. Perera

JUDGE

Solicitors;

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