

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 025 OF 2019S

STATE
vs
EMOSI DABENAISE

Counsels : **Ms. U. Tamanikaiyaroi for State**
Ms. T. Kean and Ms. M. Cobona for Accused

Hearings : **1 and 2 October, 2019.**

Summing Up : **3 October, 2019.**

Judgment : **3 October, 2019.**

Sentence : **4 October, 2019**

SENTENCE

1. In a judgment delivered yesterday you were found guilty of the following offence:

“Count 1

Statement of Offence

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

Particulars of Offence

EMOSI DABENAISE on the 5th day of August, 2013, at Namosi in the Central Division, penetrated the vagina of A.T, a child under the age of 13 years, with his finger.”

2. I note that at the time of the offence, you were 16 years old, thus for the present proceeding, you will be treated as a juvenile. As a result, you cannot be formally convicted nor sentenced (Section 20, Juvenile Act 1973).
3. The brief facts of the case were as follows. After attending a church service in a village in Namosi on 5 August, 2013 after 8pm, you met the complainant. She was also returning from the church service. She was 8 years old. You were 16 years old. You were related to her. You were her uncle. You grabbed hold of her hand, closed her mouth with another hand and dragged her to a nearby unused store. She was wearing a dress and underpants. In the store, you took off her underwear and inserted your finger into her vagina. The complainant said it was painful. You were disturbed by others. Later, the complainant left the store and went home.
4. The offence of “rape” carried a maximum sentence of life imprisonment (section 207 (1) of the Crimes Act 2009). The tariff for the rape of a child is 11 to 20 years imprisonment: **Gordon Aitcheson v The State**, Criminal Petition CAV 012 of 2018, Supreme Court of Fiji. But because you were a juvenile at the material time, you can only be imprisoned to a maximum of 2 years imprisonment (Section 30 (3) of the Juvenile Act 1973).
5. Your case demonstrates once again the dilemma of older juveniles sexually abusing younger juveniles. In this case, you were 16 years old, while the complainant was 8 years old – actually half your age. Worse still, you were her uncle, the very person who should be protecting her. Older juveniles cannot be allowed to exploit younger juveniles, and get away with a less severe sentence. A less severe sentence will not act as a deterrence, and could be seen to treating the offender more as a victim than the victim herself. The victim’s right to be protected and their rights being observed must also be emphasized and noticed by the sentencing courts.

6. You are a first offender. I have taken note of what your Counsel said in mitigation. I have carefully considered the facts of the case, and in my view, at the time of the offence, you were so unruly a character and/or a depraved character, that you have to be imprisoned for 2 years. I therefore imprison you for 2 years, to be served in an adult prison, as you no longer a juvenile now.

7. Pursuant to Section (4) (1) of the Sentencing and Penalties Act 2009, the above imprisonment is designed to punish you in a manner that is just in all the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and community denounce what you did to the 8 year complainant on 5 August 2013.

8. You have 28 days to appeal to the Court of Appeal.



Solicitor for the State :
Solicitor for the Accused :



Salesi Temo
JUDGE

Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.