

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 009 OF 2020**

**BETWEEN** : STATE

**AND** : ZAIN ZIBRAN JABBER

**Counsel** : Ms S Sharma for the State  
Mr N Sharma for the Accused

**Date of Hearing** : 6 May 2020

**Date of Sentence** : 13 May 2020

**SENTENCE**

- [1] The offender has pleaded guilty to a charge of defilement of a 14-year old girl.
- [2] The alleged incident occurred on 15 December 2019 at the offender's home in Wailoku. The complainant was the offender's neighbour. She was a school student. On the day of the incident the complainant voluntarily went to the offender's house and had consensual sex with him. The incident came to light when the complainant's father discovered a text message on the complainant's mobile phone suggesting she had lost her virginity with the offender.
- [3] The offender was arrested and charged. He entered an early guilty plea. He is a first time offender and is genuinely remorseful. He has saved the court's time and resources by pleading guilty early. The offender is currently employed by a private company involved in face mask production. The employer has described him as a dedicated worker who is

kind and generous. I give a discount of 6 months for the offender's previous good character and a one third reduction in sentence for his early guilty plea and expression of remorse.

- [4] The offender was raised in an orphanage from the age of 8 years. When he turned adult he started his own family but that relationship did not last long. He has a 3 year old child from that relationship. The marriage was dissolved after the offender was charged in this case.
- [5] The offender's personal circumstances no matter how compelling do not mitigate the offence he had committed. His ignorance of the law of defilement is not an excuse. The law expressly prohibits consensual sexual relationship with a child between the age of 13 and 16 years. Girls who fall in this age category are vulnerable due to hormonal changes during puberty. The objective of the law is to protect vulnerable children during puberty from sexual exploitation by adults. In this case the child was 14 years old and the offender was 29 years old at the time of the offence. The age gap is an aggravating factor.
- [6] The seriousness of the offence is measured by the maximum penalty prescribed for the offence and any established tariff. The maximum penalty for defilement is 10 years' imprisonment and the tariff range from a suspended sentence in cases of virtuous relationship between young people of the same age which ended in sexual intercourse to 4 years' imprisonment in cases where the offender is in a position of trust in relation to the victim and much older than her (*Donumainasava v The State* [2001] FJHC 25; Haa0032j.2001s (18 May 2001)).
- [7] In the present case, the complainant may have been in a relationship with the offender but the fact of the matter is that she was a child and the offender was a matured adult. The age gap between them and the prevalence of this offence in our community calls for a deterrent sentence despite the prospect of rehabilitation being high for the offender. As this Court said in *State v Lal* [2019] FJHC 565; HAR001.2019 [Labasa] (10 June 2019) at [16]:

The offence of defilement is prevalent in our community and the courts duty is to send a clear message that prison sentence is inevitable for sexual exploitation of underage girls.

- [8] The offender's remand period of one month is adjusted in the final sentence.
- [9] The offender is convicted and sentenced to 2 years' imprisonment as a measure of deterrence for him and others.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State

Nilesh Sharma Lawyers for the Accused

