

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 203 OF 2017**

**BETWEEN** : **STATE**

**AND** : **MATEO VALU**

*Counsel* : *Mr. S. Babitu for the State*  
*Ms. P. Reddy for the Accused*

*Hearing on* : *28<sup>th</sup> – 29<sup>th</sup> of September 2020*

*Summing up on* : *02<sup>nd</sup> of October 2020*

*Judgment on* : *09<sup>th</sup> of October 2020*

*Sentence on* : *13<sup>th</sup> of November 2020*

## **SENTENCE**

1. Mr. Mateo Valu, you have been found guilty and convicted of two counts of 'Defilement'.
2. You pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant Losana Ledua gave evidence for the prosecution and you gave evidence in defence. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not

guilty to the alleged two counts of Rape and found guilty by majority/unanimously of the lesser/alternative counts of Defilement. This court having reviewed the evidence, agreed with the opinion of the Assessors and found you guilty and convicted you of the said counts of Defilement.

3. It was proved during the trial that, you were in a relationship with Losana Ledua and had sexual intercourse with her. In absence of proof beyond reasonable doubt to convict you of rape, you were convicted of 'Defilement' as Losana was below the age of 16 years at the time of the alleged offence.
4. The two offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

*"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."*

5. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into

account during the sentencing process. I have duly considered these factors in determining the aggregate sentence to be imposed on you.

6. The offence of Defilement carries in terms of Section 215 (1) of the Crimes Act No. 44 of 2009, a maximum penalty of 10 years of imprisonment.

7. In the case of **State v Tamanisau** [2011] FJHC 752; HAC177.2010S (18 November 2011), His Lordship Temo J. explained,

*“Defiling a girl between 13 and 16 years old is a serious offence, and it carries a maximum penalty of 10 years imprisonment. Case precedents set the tariff between a suspended prison sentence to a sentence of 4 years imprisonment. Cases of “virtuous friendship” between young people of the same age, which ended in sexual intercourse, often attracted a suspended prison sentence. Cases of old man in a supervisory capacity or position of trust, who set out to seduce a girl under 16 years often get a prison sentence: Elia Donumainasava v The State, Criminal Appeal No. HAA 032 of 2001S, High Court, Suva; Etonia Rokowaqa v State, Criminal Appeal No. HAA 037 of 2004, High Court, Suva and State v Etonia Kabaura, Criminal Case No. HAC 117 of 2010S, High Court, Suva.”*

8. In consideration of the fact that this is an aggregate sentence, as well as the above tariff, I will commence your sentence at 3 years of imprisonment.

9. The aggravating factors are as follows:

- (i) Breach of trust.
- (ii) Age gap of 17 years.

10. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 1 year. Now your aggregate sentence is 4 years of imprisonment.
11. Your counsel has indicated that you have no previous convictions or any pending cases and has maintained a clean character. You are said to be remorseful. In consideration of all the mitigating factors I will deduct 18 months. Therefore your final sentence is 30 months of imprisonment.
12. Accordingly, I sentence you to a term of imprisonment of 30 months. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, and having duly considered all the relevant factors, I order that you are not eligible to be released on parole until you serve 20 months of that sentence.
13. Section 24 of the Sentencing and 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.”*

14. You were arrested on the 25<sup>th</sup> of October 2017. You were in remand till granted bail on the 27<sup>th</sup> of November 2017. Altogether, you have been in custody for a period of nearly 5 weeks. I will deduct that as the law provides the period you were in custody to be regarded as a period of imprisonment already served by you.

15. In result, you are sentenced to a term of imprisonment of 30 months with a non-parole period of 20 months. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	28 months and 3 weeks.
Non-parole period	-	18 months and 3 weeks.

16. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act. Since you have no previous convictions and no other pending case, you should be considered as a first time offender. Therefore, I do not see any reason to not to suspend your term of imprisonment. Accordingly, I suspend your imprisonment for a term of 3 years.

17. You have 30 days to appeal to the Court of Appeal if you desire so.



  
**Chamath S. Morais**

**JUDGE**

At Lautoka

13<sup>th</sup> November 2020

*Solicitors for the State*

*Solicitors for the Accused*

*Office of the Director of Public Prosecutions*

*Legal Aid Commission, Lautoka.*