

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 136 OF 2020**

**STATE**

**V**

**E. S.** [Juvenile]

**Counsel** : Mr. T. Tuenuku for the State.  
: Ms. J. Singh for the Juvenile.

**Date of Hearing** : 17 February, 2021  
**Date of Punishment** : 24 February, 2021

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**PUNISHMENT**

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*(The names of the victim and the juvenile are suppressed they will be referred to as L.N and E.S respectively)*

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 23<sup>rd</sup> September, 2020:

**FIRST COUNT**

***Statement of Offence***

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

### ***Particulars of Offence***

**E.S** on the 8<sup>th</sup> day of August, 2020 at Dreketi Settlement, Nalawa, Rakiraki in the Western Division, had carnal knowledge of **L.N**, without her consent.

2. On 29<sup>th</sup> September, 2020 the juvenile pleaded guilty to the above count in the presence of his counsel, thereafter on 8<sup>th</sup> December, 2020 the juvenile understood and admitted the summary of facts read by the state counsel.

3. The brief summary of facts is as follows:

On 8<sup>th</sup> August, 2020 at about 3.30pm the victim who was 15 years of age and a year 9 student left home at Dreketi Settlement, Nalawa, Ra with her younger sister to get a gallon of kerosene from the neighbour's house. On the way home the victim met her mother who was on her way to the shop.

4. The victim went home changed her clothes and followed her mother to the shop, on the way the victim met one Maritina, whilst talking to Maritina the victim saw the juvenile pass by. After a while the victim continued walking towards the shop, as she passed the bridge she saw the same juvenile again.

5. When the victim reached the other side of the bridge the juvenile came and grabbed the victim's hand, covered her mouth with his hand and pulled her towards the drain. The victim tried to move or shout but she could not since the juvenile had grabbed her tightly.

6. The juvenile removed the victim's panty and made her lie on the grass thereafter, the juvenile removed his shorts and vest, he then laid on top of the victim and penetrated his erected penis forcefully into the victim's vagina.

7. The victim informed her mother about what the juvenile had done to her the matter was reported to the police, the juvenile was arrested and caution interviewed by the police in the presence of his father. The juvenile admitted having sexual intercourse with the victim without her consent.
8. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his own freewill.
9. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of rape as charged. In view of the above, this court finds the juvenile guilty as charged.

### **MITIGATION**

10. The learned counsel for the juvenile presented the following mitigation:
  - a) The juvenile was 17 years of age at the time of the offending;
  - b) Year 10 student;
  - c) Resides with his parents and his younger siblings;
  - d) First time in conflict with the law;
  - e) Cooperated with the police;
  - f) Pleaded guilty at the earliest opportunity;
  - g) Seek forgiveness of the court, promises not to reoffend;
  - h) Genuinely remorseful and apologizes for his action.

## **TARIFF**

11. The maximum penalty for the offence of rape is life imprisonment. According to the case of *Aitcheson vs The State [2018] FJSC 29, CAV 0012 of 2018 (2 November, 2018)* the tariff for the rape of a juvenile is an imprisonment term between 11 years and 20 years.
12. The juvenile falls under a special categorization when it comes to punishment under section 30 (3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

## **AGGRAVATING FACTORS**

The following aggravating factors are obvious in this case:

a) Planning

There is some degree of planning by the juvenile. He saw the victim alone at the bridge he went towards her and grabbed her tightly and did what he wanted to do.

b) Victim was vulnerable and helpless

The victim was alone, vulnerable and helpless the juvenile took advantage of the situation.

c) Age difference

The victim was 15 years of age whereas the juvenile was 17 years of age, the juvenile was matured of the two, the age difference is substantial.

d) Victim impact statement

In the victim impact statement the victim states that as a result of the incident she wants to stay alone, is scared, ashamed, cannot sleep well, and has become absent minded.

**SOCIAL WELFARE REPORT**

13. As per the order of this court the Social Welfare Department conducted a house assessment and interviews before compiling a pre-punishment report for the juvenile. Unfortunately, despite an order of this court no Social Welfare Officer was present in court on the day of the punishment hearing.
14. The Social Welfare Department recommends the following:
- a) The juvenile be given a second chance in life;
  - b) Be allowed to continue his education from home.

**PARENTAL SUPPORT**

15. The parents of the juvenile were in court they have pledged their full support for their son. Both the parents admitted it was due to their fault the juvenile went into the wrong path. The parents have seen a positive change in their son after they started to counsel and pay more attention to him and they assure the court that they will continue with the supervision, guidance and support of their son. The change they have seen in their son is encouraging and they are confident their son will be able to make a better citizen.
16. As a sign of their commitment both the parents of the juvenile are happy to enter into a bond of \$500.00 each and are willing to participate in any

programs the Social Welfare Department may wish them to be part of with their son.

17. Considering the objective seriousness of the offence committed I select 1 year imprisonment as the starting point of the punishment. For the aggravating factors, I increase the punishment by 3 years. The interim punishment now stands at 4 years imprisonment.
18. For the early guilty plea which I consider to be genuine and mitigation I reduce the punishment by 2 years, the punishment now is 2 years imprisonment. From the court file the juvenile has not been in detention for this offence.
19. The final punishment is now 2 years imprisonment for one count of rape the juvenile is charged with. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
20. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

*“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:*

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

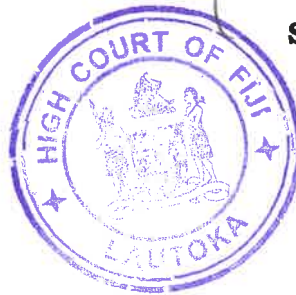
21. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment or a suspended punishment.
22. The juvenile is a young person as per the Juveniles Act, he is of good character, isolated offence was committed by him, he was 17 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and he takes full responsibility for his actions. These special reasons render immediate imprisonment inappropriate.
23. The juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future, this year he is in year 10 sitting for external examination, the juvenile also accepts responsibility and has promised not

to reoffend. This court has taken into account rehabilitation over and above deterrence.

24. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
25. The only reason why this punishment is below the tariff is because the Juveniles Act imposes a limit on the punishment for young persons.
26. In summary the juvenile is imposed a punishment of 2 years imprisonment for the offence of rape which is suspended for 3 years with immediate effect. The effect of the suspended sentence is explained to the juvenile.
27. The following orders are to take immediate effect:
  - a) The juvenile is imposed a punishment of 2 years imprisonment for one count of rape which is suspended for 3 years with immediate effect;
  - b) The juvenile is to be placed under probation with the Social Welfare Department for the next two years. The terms of the probation is to be worked out by the Social Welfare Department in consultation with the Probation Officers and the parents;
  - c) Both parents of the juvenile are to sign a good behaviour bond on behalf of the juvenile in the sum of \$500.00 each. The parents are also to pay a fine of \$120.00 within 14 days from today payable at the Magistrate's Court, Rakiraki;



- d) The Social Welfare Department is to immediately arrange for the counselling of the juvenile in the presence of his parents with the view of assisting him in keeping out of conflict with the law;
- e) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;
- f) It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;
- g) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department, Rakiraki;
- h) 30 days to appeal to the Court of Appeal.



*Sunil Sharma*  
**Sunil Sharma**  
**Judge**

**At Lautoka**

24 February, 2021

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Juvenile.**