

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
(Sitting as a Juvenile Court)

CRIMINAL CASE NO. HAC 91 OF 2020

STATE

vs.

T. D. (Juvenile)

Counsel : Mr. T. Tuenuku for the State
Ms. K. Vulimainadave for the Juvenile

Date of Hearing : 19th of January 2021

Date of Ruling : 10th of February 2021

PUNISHMENT of the Juvenile

(Name of the Accused is suppressed and will be referred to as T. D. or the juvenile)

- [1] On the 12th of August 2020, in this Court, the **juvenile** entered an unequivocal plea of guilty to the two counts each of **Rape** and **Sexual Assault** contrary to section 207(1), (2) (b) & (3) and section 210(1)(a) of the Crimes Act 2009, respectively.
- [2] The Summary of facts read over and explained to him and he agreed and admitted those to be true and correct.
- [3] The Summary of Facts filed by the State disclosed that;

Briefly, the complainant in this matter is L.G.T, 8 years old, student, of Sakoor Place, Jinnu Road, Lautoka. The juvenile is, T.R, 16 years old, student, also of Sakoor Place, Jinnu Road, Lautoka. The juvenile is the uncle of the complainant.

Incidents

On the 24th of April 2020 at around 9.00 pm, the complainant went to one of the bedrooms inside their house and played there alone. When the complainant was playing there alone, the juvenile entered the room and came and sat beside the complainant. The juvenile then inserted one of his fingers into the vagina of the complainant through the complainant's short leggings (1st count). After that the juvenile then lay down beside the complainant and licked the complainant's vagina (2nd count).

On the 1st of May, 2020, at around 8.30 pm, after having dinner, the complainant's mother sent the complainant to the bedroom to bring the mattress from the bedroom to the sitting room. When the complainant went to the bedroom, the juvenile followed the complainant to the bedroom, once he reached the bedroom, the juvenile pushed the complainant down on the bed, then the juvenile pulled up the complainant's skirt, he pulled the complainant's panty to one side and inserted one of his fingers into the vagina of the complainant and fondled the complainant's vagina (3rd count). This was very painful to the complainant. After that, the juvenile licked the complainant's vagina (4th count). As the juvenile was doing this, the complainant's mother entered the bedroom and saw what the juvenile was doing. The matter was then reported to Police and the juvenile was arrested.

The complainant was medically examined on the 1st of May 2020 and the complainant's hymen was found not to be intact. According to the complainant's medical report, the injury seems fresh and was likely caused by blunt force trauma. (TAB A is the medical report of the complainant).

[4] Upon hearing the **juvenile** plead to the charged counts and agreeing to the summary of facts, I find the charged counts of Rape and Sexual Assault, proved against him, as the ingredients of the offences are adequately proved by the admitted facts.

[5] The four offences he has committed are founded on the similar facts and within a single series of offences. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence, for the four offences he has 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."

[6] The maximum punishment prescribed by section 207 of the Crimes Act of 2009, for the offence of Rape is imprisonment for life.

[7] The tariff for the offence of Rape of a child is between 11 to 20 years of imprisonment. [Aitcheson v State – CAV0012 of 2018]

[8] However, Section 30 (2) and (3) of the **Juvenile Act** restrict the court to a maximum term of two years imprisonment for a juvenile offender. Therefore, the court in

sentencing juvenile offender for crimes of this nature, have to consider the seriousness of the offences of this nature as well as the purpose of the legislature not to have juvenile imprisoned for more than two years.

[9] The mitigating factors in favour of the juvenile is:

- i) Said to be truly remorseful & seeks forgiveness.
- ii) Being co-operative with the police.
- iii) He is 16 years of age at the time of the incident.
- iv) He is a first time offender.
- v) Pleaded guilty at the first opportunity.

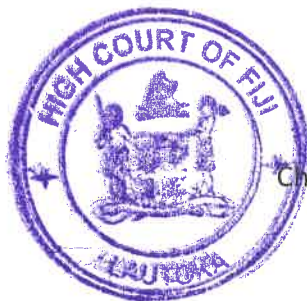
[10] The aggravating factors against the juvenile is:

- i) The act was premeditated.
- ii) Breach of trust as the victim is a niece of his.

[11] Having duly considered the material before me, I impose a punishment of 22 months of imprisonment and suspend it for a period of 5 years.

[12] The consequences of any violation of a suspended term is explained to the juvenile.

[13] 30 days given to appeal to the Court of Appeal if he desires so.



A handwritten signature in blue ink, appearing to read "Chamath S. Morais".

Chamath S. Morais
Judge

Solicitors: Office of the Director of Public prosecution for the State
Legal Aid Commission, Lautoka for the juvenile