

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 2 of 2021

STATE

vs.

JALE SUVADI

Counsel: Ms. K. Semisi for the State
Ms. N. Ali for the Accused

Date of Hearing: 16th – 18th August 2022

Date of Closing Submission: 19th August 2022

Date of Judgment: 23rd August 2022

Date of Sentence/Mitigation Submission: 23rd August, 2022

Date of Sentence: 26th August, 2022

SENTENCE

(The name of the victim is suppressed she will be referred to as "R.I.S. ")

Introduction

1. Mr. Jale Suvadi you were found guilty and are convicted by this court for the offence of Defilement of R.I.S on 27th of September, 2020 punishable under Section 215 of the Crimes Act after a full hearing of the trial of which I presided. You appear today to be sentenced for the said offences.

Circumstances of the Offending

2. On the 26th of September you cunningly and artfully spoke to R.I.S and induced him to follow you to your house. You promised to give him some food and use this to lure him into your quarters. R.I.S being a young adolescent in a vulnerable age was induced to go with you. The victim said that he trusted and believed you and never expected you to act or behave in the manner you did after taking him home. Upon taking him there you took advantage of him to satisfy your carnal desires. You were almost 57 years and your victim was just 15 years and 7 months of age. You kept him throughout the night got him to consume grog and the following morning you penetrate him anally for the second time in your lustful pursuit. It appears that to some degree R.I.S himself was giving in to his adolescent desires which you have taken advantage of.

Sentencing Regime

3. For the offence of defilement section 215 of the Crimes Act prescribes a maximum penalty of 10 years imprisonment. The tariff as laid down by State v Lal [2019] FJHC 565; HIR001.2019 [Labasa] 10th June 2019 is as follows. Sentences passed range from suspended sentence (usually where the accused and victim are both of same or similar age and are in relationship) to 3 or 4 years imprisonment where the accused is in a position of trust in relation to the victim and is much older. In that case the accused was imprisoned for 3½ years. Then in the case of State v Chand [2019] Sentence FJHC549; HAC 98.2018 the accused was convicted of defilement of a 13 year old male child and was sentenced for a period of 2 years and 14 days but it was not suspended. Justice Prematilaka in his ruling dated 13th August 2021, in Criminal Appeal No. AAU 75.2019 it is observed that there is a disparity in sentencing accused in defilement offences. His Lordship also observe that there is no uniformity as to the tariff and sentencing guidelines and opined that until such time as guidelines may be determined that Judges follow the well-established tariff of suspended sentence to 4 years for defilement being mindful that a sentence even above the upper limit of 4 years can be meted out with reasons.
4. The sentences for defilement range from a suspended sentence to four years imprisonment (*Etonia Rokowaqa v State Criminal Appeal No. HAA 37 of 2004*). It appears that

suspended sentence is reserved for offending is between persons of similar age engaging in consensual intercourse in relationship or friendship of a virtuous whilst the higher end of the tariff is for offenders who are older and in position of trust with the victim (vide - *Elia Donumainasuva v State Criminal Appeal No. HAA032 of 2001, State v Roqica & Others Criminal Appeal No. HAA037 of 2002S*).

5. The sentence prescribed for defilement was 5 years imprisonment under the Penal Code but in 2009 with the implementation of the Crimes Act the maximum penalty was increased to 10 years imprisonment. This is a clear indication that the Legislature has treated this offence as serious.

Objective seriousness, culpability and harm of the offending

6. Defilement committed by the accused is an instance of extreme depravity and as to the objective seriousness the manner in which the accused had approached a total stranger and a young boy and has acted and pretended in such a manner to win the confidence in such a manner to deceive the victim. He has led an adolescent child to be used to fulfil the accused's perverted sexual desires.
7. Defilement of young adolescent children is a serious offence indeed and it seems to be prevalent in Fiji. The accused had very artfully preyed on a vulnerable victim and taken him to his house on the pretext of offering food. The conduct of cheating and luring the victim in this manner is despicable and abhorrent by any standard of decency. The conduct of the Accused in total disregard of the protection afforded to young children and the prohibition of sexual intercourse with adolescent makes his offending necessarily serious. Psychologists certainly has shown that the effect of sexual abuse on young children is profound and long lasting.
8. Defilement is a physical invasion committed on the victim under a deceptive circumstance especially when the offender is of an advanced age very much senior to the victim. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an

indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.

9. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. R.I.S says that after this incident he does not trust anyone and that he does not socialize with friends and family and always wants to be on his own. He always locks my door. If his parents send him somewhere especially to a shop he is unable to go by myself and always needs one of my siblings to go with him. Whenever he thinks about what Jale did to him is unable sleep well. He finally says that he sometimes hates his parents sending me to the shop by himself and he always thinks about what Jale did to him. It is clear from the victim impact statement that your offending has had a very significant and long-lasting psychological impact on the minor a vulnerable complainant which must be considered in sentencing.

The Aggravating Factors are as follows:

10. The victim has reposed trust on the accused which was breached. There was an obvious disparity of 42 years of age between the accused and the victim. There has been some pre-planning and certainly scheming by the accused. He had taken advantage of the complainant's vulnerability tender age and naivety. He had acted in total disregard of social religious and traditional rules that prohibit sexual relation with children. You have exposed the innocent mind of a young child to sexual activity at such a tender age you had no regard to his rights as a child, his rights as a human being and his right to live a happy unmolested and peaceful life. You have caused untold misery to his mother

Mitigating Factors are as follows

11. The accused is 59 years old now and was 57 years at the time of offending. That he resides at the Kalekana Settlement with his elderly mother and uncle. He is self-employed and earns around \$120 to \$130 a week as a grass cutter and he is a sole breadwinner looking after his mother and uncle who are unemployed. That from the beginning the accused had admitted anal intercourse on 27th September, 2020. That he had shown remorse for his

actions from so admitting. He promises to re-offend and be on his best behavior. He committed the act without full appreciation of its gravity as a crime. The learned defence counsel submitted that the said admission of the act of the 27th be considered as an admission and a plea of guilt to defilement for which he took responsibility.

12. On this I observe that the accused though he admitted the act of penetration he took up the position that he believed the victim was 18 years. This by itself demonstrates that he did not admit defilement. As to the submission that he did not appreciate the gravity it is unrealistic for the simple reason that he was a mature adult of 57 years then who was sufficiently of mature age and understanding to know the gravity of an act of this nature. Especially when the victim is 15 years the disparity by itself should impress upon him the legal nature of his conduct is guilty mind was demonstrated by the fact of him running away to the bush when the mother arrived at his house on the 27th. For 2 months thereafter he was virtually in hiding and admitted that it was a neighbor who had provided the police with his village address.
13. However, I would consider the fact that he did not act in an extremely cruel manner towards the boy. The accused has no previous conviction and he is a first offender so this court considers him a person of previous good character.

Sentence

14. Your offending is serious that only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of the case, will be as follows:
I pick and start with a sentence of 3 years imprisonment. I add 2 years for the aggravating factors, making the total sentence 5 years imprisonment. As for the mitigating factors I will I deduct 1 year, leaving a balance of 4 years imprisonment.
15. I am satisfied that you are manipulative; you are somewhat of a sexual predator of a pubescent young adolescent children to an extent; you are dangerous. The public and in particular young children and young children need protection from you. On the one hand

this is a case which would justify a long ‘denunciatory’ sentence. I bear in mind that; such a sentence is one of last resort. However, in the circumstances of this offending in my judgment, justice and protection of the public can and should be achieved by such a reasonable sentence.

16. In view of the reasons discussed above, I sentence you to a total period of four (04) year’s imprisonment for the count of Defilement for which you stand convicted.

Non-Parole period

17. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a three (03) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
18. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what you did to the complainant and to sentence in a manner which is just in all the circumstances of the case.

Head Sentence

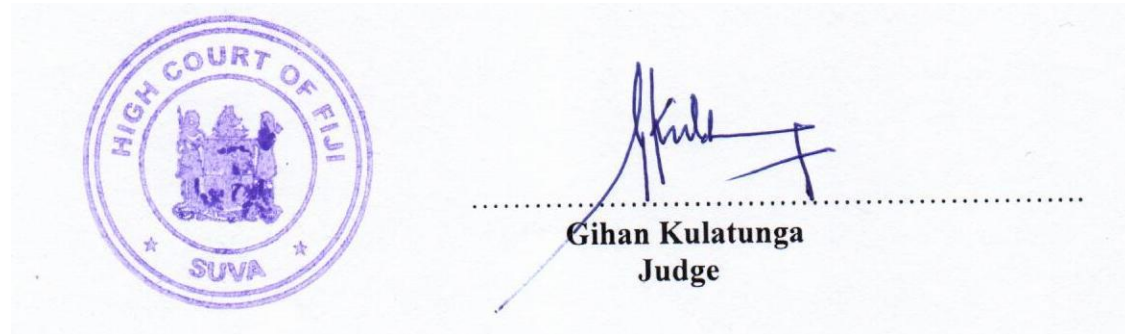
19. Accordingly, I sentence you to a period of four (04) years imprisonment for the count of defilement you are convicted. However, you are not entitled to parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

20. You were in arrested remanded for this case on the 30th of November 2020 up to the 21st of February 2021. This is a period of almost 3 months for which this court will give you credit. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold

that the said period of 3 months be considered as imprisonment that you have already served.

21. Accordingly, the actual sentence is a period of is three years (03) years and nine (09) months imprisonment with a non-parole period of two (02) years and nine (09) months
22. The complainant's name is permanently suppressed to protect her privacy.
23. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva

26th August, 2022.

Solicitors

Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the Accused