

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 176 of 2020

STATE

V

SIMELI TAVAKECE

Counsel : Mr. J. Nasa for the State.
: Ms. S. Ali and Ms. S. Singh for the Accused.

Dates of Hearing : 07 and 08 February, 2023
Closing Speeches : 09 February, 2023
Date of Judgment : 10 February, 2023
Date of Sentence : 27 February, 2023

SENTENCE

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

1. In a judgment delivered on 10th February, 2023 this court found the accused not guilty of one count of rape but found him guilty and convicted him for the lesser offence of defilement of a young person between 13 and 16 years of age.

2. The brief facts were as follows:
3. The victim in the year 2020 was 15 years of age and the accused 18 years. The accused got selected in the Nanukuloa rugby team which was camping at the Nukuloa Village. It was here the victim and the accused met and began their relationship. On 7th October, 2020 the victim and the accused met at the bus stop and both agreed to walk to the beach.
4. On the way to the beach the accused asked the victim if they could have sex. The victim said to wait until they reach the beach, at the Vaivai tree near the beachfront the accused told the victim to stop. The accused leaned towards the victim and both started kissing and hugging each other. Thereafter the “*sulu*” of the victim was spread on the ground. The accused and the victim had sexual intercourse for five minutes.
5. The matter was reported to the police. An investigation was conducted, the accused was arrested, caution interviewed and charged.
6. Both counsel filed sentence and mitigation submissions for which this court is grateful.
7. The following personal details and mitigation was presented on behalf of the accused:
 - a) The accused was 18 years of age at the time of the offending;
 - b) First offender;
 - c) Looking after his grandmother;
 - d) Is a Farmer;
 - e) Seeks forgiveness of the court;
 - f) Is remorseful of what he has done;
 - g) Promises not to reoffend;

- h) Has been suspended from his rugby team because of this offence.
8. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.
9. I do not see any aggravating factors in this case.

TARIFF

10. The maximum penalty for the offence of defilement is 10 years imprisonment. The current sentencing tariff for the offence of defilement is from a suspended sentence to 4 years imprisonment (*Elia Donumainasava v State [2001] HAA 32/01S, 18 May 2001*). In *State v Pita Vetaukula Criminal Case No. HAC 46 of 2013 (8 July 2014)*, this court stated that suspended sentences are appropriate in cases of non-exploitive relationship between persons of similar age, while a custodial sentence is appropriate in cases of sexual exploitation of younger girls by older men who hold a position of authority over the girls.
11. In *Vetaukula* (supra), the offender was sentenced to 18 months imprisonment after he pleaded guilty to a charge of defilement. The offender was the headman of the village. He was 22 years old when he defiled a 15 year old from his village. In sentencing the offender the court said:

The courts have a duty to protect young girls from any form of sexual exploitation. In cases of sexual exploitation of young girls, the primary

purpose of the sentence is general deterrence. Rehabilitation of the offender is a secondary purpose.

12. After assessing the objective seriousness of the offence committed I take 2 years imprisonment (lower range of the scale) as the starting point of the sentence. There are no aggravating factors so the sentence will not be increased. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused is a first offender who has come to court with a clean record. In this regard, I reduce the sentence for good character and his other mitigation.
13. I note from court file that the accused was not remanded for this matter hence no further deduction will be given. The final sentence is 1 year and 4 months imprisonment.
14. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
15. 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:

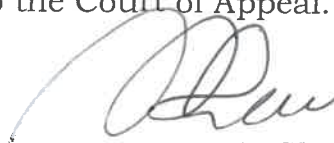
“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended 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."

16. 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 term or a suspended sentence.
17. The accused was 18 years of age at the time of the offending, is of good character, an isolated offence was committed by him, is remorseful, cooperated with police, this is not a case of breach of trust and he takes responsibility of his actions. These special reasons render an immediate imprisonment term inappropriate.

18. I am sure the accused has learnt his lesson and has now realized that it is important to follow the law at all times and not be carried away by personal lust or emotions. At this young age the accused has better things to do in life hence an imprisonment term will not augur well for him. In view of the above, this court has taken into account rehabilitation as an overriding factor.
19. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that this sentence is just in all the circumstances of this case.
20. In summary the accused is sentenced to 1 year and 4 months imprisonment which is suspended for 3 years. The effect of the suspended sentence is explained to the accused.
21. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka
27 February, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.