

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL DIVISION

Criminal Case No. HAC 200 of 2021

STATE

vs

ALIPATE IOWANE

Counsels: Ms. Semisi K - for State
Ms. Mataika P - for Accused

SENTENCE

1. The Accused in this matter, **Alipate Iowane**, was charged with three counts of Rape by the Director of Public Prosecutions, as below:

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (b) of the Crimes Act 2009.

COUNT 2

Statement of Offence

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

COUNT 3

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (b) of the Crimes Act 2009.

2. Upon reading of the charges in Court on 03rd of March 2022, **Mr. Alipate Iowane** understood and pleaded not guilty to the charges filed against him and the matter proceeded to trial. At the end of the trial, judgement was derived by this Court on 31/03/2023 acquitting the Accused on the three counts of Rape charged in this Court by the Prosecution. However, considering the evidence led in Court, acting under **Section 271** of the **Criminal Procedure Act of 2009** this Court convicted the Accused for the offence of **Defilement of a Young Person between 13 and 16 years of Age**.
3. Having carefully considered the submissions in aggravation made by the Prosecution and mitigation made by the Defense, this Court will now proceed to pronounce the sentence in this matter, as below:
4. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum punishment for the offence of **Defilement** under **Section 215 (1)** of the **Crimes Act 2009** is imprisonment for 10 years.
5. The accepted tariffs for the offence you have committed depend on the nature and circumstances under which the offence of Defilement was committed, and the consequences entailing the commission of the offence to the victim and her family at large.
6. This Court also recognizes that to address the victimization of young children in our society by this type of offences that shatters the future prospects and expectations of them and their families, any punishment imposed by Court for this offence should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers in our society.

7. As per the existing law in Fiji, the sentencing tariff for Defilement ranges from a suspended sentence to imprisonment of 3 to 4 years. In this regard, in the case of **State v Lal [2019]¹**, His Lordship Justice Gounder stated, as below:

“Reported cases in Fiji and abroad show that sentences passed range from suspended sentences (usually where the accused and victim are both of the same or similar age and are in a relationship) to 3/4 years imprisonment where the accused is in a position of trust in relation to the victim, and much older than her.”

8. In assessing the objective seriousness of your offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the Prosecutrix. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In this matter, you had committed Defilement and exploited a young girl with whom you stayed in her home. In this regard, this Court has a duty to discourage and deter this kind of behavior that belittles the much-valued family fabric of our society. Having considered all these factors, this Court would pick a starting point of 3 years imprisonment against you from the high range of tariff as the first step in the sentencing process.
9. In aggravation, Prosecution informs this Court the age disparity between you and the victim. In that you were 31 years old, and the victim was 15 years old. In this regard, you had taken advantage of a very young girl with little experience of the vicissitudes and challenges of life, who was living under the protection of her mother and grandfather. Considering this noticeable disparity of age, I increase your sentence by 6 months,

¹ [2019] FJHC 565

10. Further, Prosecution highlights the trust the victim had in you, where she called you “dad”. In this regard Prosecution is of the view that there is a significant breach of trust by you, where the mother of the victim had no fear in giving you and your wife accommodation in her house and left her daughter, the victim, to live with you. In this regard, I recognize that trust in the family play a very important role in Fijian families, which jells the members of the family together against any external intrusions. Your action has dumbfounded this family trust. In considering this fact, I increase your sentence by 1 year.
11. In mitigation, your counsel has informed Court that you are first offenders and that you have maintained good characters before the involvement in this offence. However, I cannot grant your request to impose a non-custodial sentence in this case. I would like to highlight the sentiments of **Nawana J** in the case of *State v Tilalevu* [2010]², where **His Lordship** said that;

“I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as 'First Offender Syndrome' - where people would tempt to commit serious offences, once in life, under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule.”

12. If this Court is to give credence to this “Fist Offender” phenomena, Court will send a wrong signal to the citizenry of this Country, where Court would inform every citizen that they could commit a crime for the first time with minimum repercussions. We should remember that a crime is a crime, regardless of whether it is the first crime of the offender or the 10th crime. Our civilizations have detested crimes from the very inception.

² [2010] FJHC 258

13. The Prosecution also brings to my attention that you have been in remand custody for 1 year and 6 months, which periods should be deducted from your sentence separately.
14. **ALIPATE IOWANE**, in considering all the factors analyzed above, I sentence you to 36 months imprisonment with a non-parole period of 30 months imposed under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009**.
15. Further, a permanent DVRO is issued against you for the protection of the victim in this matter.
16. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 10th day of May 2023

cc: Office of Director of Public Prosecutions
Office of Legal Aid Commission