

**IN THE MAGISTRATES COURT OF FIJI**  
**AT NAUSORI**

Vunidawa Criminal Case No: - 108/2018

**STATE**

**v**

**JIUTA RINAMALO**

For the Prosecution: Sgt.Shalend

For the accused: Mr.Verabalavu(LAC)

Date of Sentence: 12<sup>th</sup> of August 2019

*(As the victim is a juvenile her name is suppressed and identified as Ms. LB in this sentence)*

**SENTENCE**

1. **JIUTA RINAMALO** , you were charged with two counts of Defilement of Young Person between 13 and 16 years contrary to section 215(1) of the Crimes Act No 44 of 2009("Crimes Act").
2. You pleaded guilty and admitted the following summary of facts presented by the prosecution :

Between the 1st day of January 2016 and 15th day of April 2018 at Naivucini village, Naitasiri, Accused had unlawful carnal knowledge with one LB (victim) student of Naitasiri being the age of 13 years and 15 years on two(2) occasions.

**Count 1**

Sometimes between 1st and the 31st day of January at Naivucini, Naitasiri, victim was standing at the footpath whereby Accused asked her to go to a vacant house. The victim agreed and she went with Accused. Accused requested her to be his girlfriend and she agreed to it. Accused then told the victim to lie down on the floor and told victim to remove her panty which the victim did. Accused later unlawfully inserted his erected penis into victim's vagina whilst lying on the floor and moved to and fro until he ejaculated. The victim felt pain whilst having sexual intercourse as it was the first time for her to have sex.

Count 2

Sometimes between 09.04.2018 at about 8.00pm, at Naivucini, Naitasiri victim met Accused on the footpath and told her to come to Accused's place on 7.00pm. The victim then went to Accused's place after dinner. When the victim arrive at Accused house Accused was lying inside the house. Accused asked victim to have sexual intercourse once the victim entered the house. The victim close the door and laid on the mat and took off her black panty. Accused then lie on top of the victim and inserted his erected penis on the victim's vagina and moving to and fro until he ejaculated.

Accused and victim are cousins. The victims now staying in the village and accused stayed at Nakelo District School compound, Nakelo, Tailevu.

Matter was reported to police whereby PC 5131 Joape Kalinisei was detailed to be the investigation officer in this case and investigation was carried out. Later Accused was located, arrested and interview under caution whereby he admitted to the allegation. Based on the evidence on hand, Accused was subsequently formally charged and is appearing in custody.

3. I am satisfied that your plea was unequivocal and voluntary.
4. When you committed the first count, you were 17 years old and a juvenile. Hence for the first count I find you guilty as per the section 20 of the Juvenile Act.
5. When you committed the second count you were 19 years old and an adult .Accordingly I convict you for the second count.
6. The maximum penalty for Defilement under the Crimes Act is 10 years imprisonment.
7. In **State v Raibevu** - Sentence [2012] FJHC 1040 his Lordship Justice Madigan stated:

**"The maximum penalty for defilement is ten years' imprisonment; and the usual range of sentences is from a suspended sentence for protagonists in a "virtuous relationship" whilst the higher end of the range is for offenders who are older and in a position of trust. (Rokowaqa CA 37/2004, Kabaura HAC 117/2010)."**

8. In **Naiwau v State** [2018] FJHC 193; HAA01.2018 (16 March 2018) the court held that the tariff for this offence from suspended sentence to 04 years imprisonment.
9. Section 17 of the Sentencing and Penalties Act, provides:

**"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."**

10. The offences that you found guilty and convicted are similar nature and I am going to impose an aggregate sentence of imprisonment for these two counts pursuant to section 17 of the Sentencing and Penalties Act.
11. In Laisiasa Koroivuki v the State [2013] FJCA 15; AAU0018.2010 (5 March 2013) Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed :

**"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".**

12. Considering the above judicial precedents and based on an objective seriousness of the offences, I select 14 months as the starting point for your sentence. This is selected from the lower end of the tariff for this offence.
13. You are related to the victim. She is your cousin .By committing these offences you breached her trust. Also there is significant age difference (04 years) between the parties. When the first incident happened the victim was only 13 years old. I consider these as aggravating factors and add 20 months to your sentence to reach 34 months imprisonment.
14. In mitigation your counsel submitted that you are presently 20 years old, single, earning \$50 weekly. These are the personal mitigating factors of the accused and based on the decision of Anand Abhay Raj v State [2014] FJSC 12; CAV 003 of 2014) I disregard them as valid mitigating factors in this case.
15. The prosecution confirmed to this court that you are a first offender and for that I deduct 05 months from your sentence to reach 29 months imprisonment.
16. You pleaded guilty early saving the time and resources of the court and also victim from coming to court and giving evidence. Now I have to consider how much credit need to be given for your guilty plea.
17. The practice adopted till recently for sentencing court for this earliest guilty plea was to give 1/3 deduction, but this has been changed by the decision of Aitcheson V The State [2018] FJSC 29;CAV0012.2018 (2 November 2018)
18. In that case his Lordship Chief Justice Gates (as he then was ) said;


**“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”**

19. Considering the nature of these offences and aggravating factors present in this case I find the discounts need to be reduced even though you pleaded guilty early. Accordingly I deduct only 05 months from your sentence to reach 24 months imprisonment.
20. Now I would consider whether to suspend your aggregate sentence pursuant to section 26(2) (b) of the Sentencing and Penalties Act.
21. In **State v Lal** [2019] FJHC 565; HAR001.2019[Labasa] (10 June 2019) his Lordship Justice Goundar said:

**“The offence of defilement is prevalent in our community and the courts duty is to send a clear message that prison sentence is inevitable for sexual exploitation of underage girls.”**

22. You are related to the victim and breached her trust by committing these offences. There is a significant age difference between the parties. Even though your counsel submitted there was some relationship, when asked by this court, you denied that also. I find this is a case of sexual exploitation of an underage victim by an older relative. Considering all these factors I find a custodial sentence is warranted in this case to denounce the behavior of the accused and deter others from committing similar offences in future in rural areas.
23. **JIUTA RINAMALO**, accordingly you are sentenced to 02 years imprisonment for this charge with a non-parole period of 01 year.
24. For the safety of the victim, I also grant permanent domestic violence restraining order with standard non-molestation and non-contact orders.
25. 28 days to appeal.



  
Shageeth Somaratne

Resident Magistrate