

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 531 of 2019

STATE

v

LIVAI PENISENI

Appearance : **PC Lal** for the prosecution
Accused in person

Sentence : **8 November 2019**

SENTENCE

1. Livai Peniseni today is for sentencing for the offence of *Defilement of Young Person between 13 and 16 years of Age*, contrary to *section 215(1) of the Crimes Act*.
2. The name of the victim is suppressed to protect her interest and privacy and referred to as "the Victim" in this sentence.
3. The accused waived his rights to counsel on 14 October 2019, and pleaded guilty to the charge on the same day. I am satisfied that your plea was unequivocal as it was given on your own free will.

4. The brief summary of facts are that the accused is 61 years old, and the step father of the Victim. The victim was 14 years and 5 months, a form 4 student of Labasa Sangam College.
5. Between 1st to 31st January 2019, the wife of the accused and the mother of the victim went to sell roti parcel at the Labasa market. The accused was at home with the victim and her two sisters. At 9pm the victim went to her bedroom to sleep whilst the victim was fast asleep. She was awoken when she felt something heavy on top of her. When she opened her eyes, she saw the accused on top of her.
6. She tried to push the accused but she could not as he was too heavy. The accused was wearing a black long track pants and it was down on his knees. The accused pulled out the victim's red panty. The accused went on top of her, inserted his erected penis into her vagina and had sexual intercourse with her by moving his erected penis forward and backward for 10 minutes and ejaculated inside her vagina.
7. After the sexual intercourse, she went to her mother's bedroom as she was having vaginal pain. She did not relay the incident because she was scared. Her mother heard of the rumours that the victim is pregnant. She asked the victim which she denied. The victim was medically examined by Dr Mereoni where she confirmed that the victim was 35 weeks pregnant. The matter was reported resulted in this proceeding.
8. The accused admitted to the above summary of facts on 29 October 2019, and convicted as charged

9. The maximum sentence for this offence is 10 years imprisonment. The tariff range from a suspended sentence for young person in a virtuous relationship upwards to four years for elder persons taking advantage of young girls.
10. The aggravating factors are ;-
- a. *Breach of trust as you are the stepfather of the victim,*
 - b. *You take advantage of your position as a father to exploit the victim, when she is under your care,*
 - c. *You take advantage of your age difference and your family relationship to exploit and abuse the victim,*
 - d. *You have no respect on the victim and her rights as a child and human being.*
11. The compelling mitigating factors are : -
- a. *First offender, of 61 years old and shows your previous good character,*
 - b. *Seek the court forgiveness,*
 - c. *Learnt your lesson,*
 - d. *Married with 2 children and sole breadwinner,*
 - e. *You wanted to go for a contract in PNG.*
12. For your sentence, I pick 2 years as my starting point. I add 2 years for the aggravating factors and that increase your sentence to 4 years. I reduce 1 year for your mitigation. That reduce you sentence to 3 years imprisonment.
13. You entered an early guilty plea and you are entitle for one third reduction. That is 1 year. I reduce your sentence by 1 year. That reduce your sentence to 2 years imprisonment.

14. You currently in remanded for 1 month. I reduce that from your sentence and that reduce your sentence to 1 year and 11 months imprisonment.
15. Your final sentence is 1 year, and 11 months imprisonment.
16. I have considered *section 4* of the *Sentencing and Penalties Act*. I have considered the principle of rehabilitation and deterrence. The facts of the case calls for an immediate custodial sentence as you not only defile the victim, you impregnated her.
17. Livai Peniseni, I now sentence you to 1 year and 11 months imprisonment with immediate effects.

28 days to appeal.



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", is written over a light blue horizontal line.

C. M. Tuberi
RESIDENT MAGISTRATE