

IN THE RESIDENT MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Juvenile Case No. 40 of 2017

Extended Jurisdiction File No. 95 of 2017

The State

v

T G M (Juvenile)

For the State : Counsel Mr. Zunaid/ Ms. Lodhia (DPP)
For the Juvenile : Counsel Ms. Grace (Legal Aid)
Date of the Order : 18th April 2019

ORDER OF COURT

1. You have been charged as follows,

1st Count

(Representative Count)

Rape: Contrary to section 207(1) & (2) (a) and (3) of the Crimes Act 2009.

Particulars of the offence

You (the juvenile), between January 2016 to 15th May 2016, at Lami in the Central Division, penetrated the anus of B J V (victim's name is suppressed), a child under the age of 13 years.

2nd Count

Rape: Contrary to section 207(1) & (2) (b) and (3) of the Crimes Act 2009.

Particulars of the offence

You (the juvenile) on the 15th day of May 2016 at Lami in the Central Division, penetrated the vagina of B J V (victim's name is suppressed), a child under the age of 13 years, by using your tongue.

3rd count

Sexual Assault: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of the offence

You (the juvenile) on the 15th day of May 2016 at Lami in the Central Division, unlawfully and indecently assaulted B J V (victim's name is suppressed), by kissing her vagina.

2. 1st and 2nd counts are indictable offences and the High Court has granted extended jurisdiction to hear this case to the Juvenile Court on 28/08/2017 in terms on Section 4(2) of the Criminal Procedure Act 2009.
3. You have pleaded not guilty to all 3 counts on amended charges on 30/10/2017 and the case was taken up for the hearing on 12/09/2018 and 29/10/2018. The court found you guilty to all 3 counts by its judgment dated 04th February 2019.
4. The brief facts of the case are that you and the victim are cousins and were living in adjoining houses. You used to sleep at victims house as there was not enough space at your house. While no one was at home, you have licked the victim's vagina and penetrated her anus with your penis. You had been doing this for some time. The victim was 7 years old at the time of the incident while you were 14 years old.

Tariff

Rape

5. Maximum penalty for Rape is life imprisonment. Tariff has been decided in case of *Gordon Aitcheson v The State* (CAV0012.2018 - 02nd November 2018) as *11-20 years imprisonment*, where the victim is a young person.

Sexual Assault

6. The maximum penalty for Sexual Assault is 10 years imprisonment. In the cases of *State v. Abdul Khaiyum* [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012) and *State v. Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of **Sexual Assault** in terms of Section 210 (1) of the Crimes Act.
7. It was held in *State v Laca* (supra) "The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks."
8. In addition to the aforementioned tariff, this court has a limitation in deciding an appropriate punishment for you, in terms of section 30(3) of the Juvenile Act, which says, *a young person shall not be ordered to be imprisoned for more than 2 years for any offence.*

Aggravating Factors

9. The victim is your cousin who was in tender age and you have breached the trust that she has placed on you as an elder cousin. You have taken the advantage of the vulnerability of the victim. These are planned acts which you have

committed while nobody else was at home. These factors have to be considered as aggravating factors.

Mitigating Factors

10. You were 14 years (completed 14 years) old at the time of the offence.
11. You are a first offender.
12. Currently you are a year 12 student at Lami High School.

Analysis

13. Rape and other sexual offences are considered to be very serious offences which are undoubtedly denounced by the society. The gravity of the offence increases where the victim happens to be a juvenile. In the case of *Mohammed Kasim vs. The State* (Appeal Case No. 14 of 1993) the court observed that " *It must be recognized by the courts that the crime of rape has become altogether too frequent... the sentences imposed by the courts for that crime must reflect an understandable public outrage*"
14. The prosecution has filed the counselling report of the victim which shows that she has been traumatized by the experience she has undergone at such a young age. She is still having certain impacts like fear and anxiety due to the offences committed on her.
15. Section 4 of the Sentencing and Penalties Act stipulates the purposes of sentencing and section 4(1)(a) says that the offenders should be punished to an extent and in a manner which just in all the circumstances.
16. Offenders of your caliber should be deterred from further offending and the punishment should signify the denunciation by the court and the society of the commission of offences in this nature.

17. As 1st and 2nd counts of Rape could be considered as series of offences of similar character, I will impose an aggregate punishment for those two offences in terms of the section 17 of the Sentencing and Penalties Act 2009. Section 17 reads as follows;

"17. 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."

18. Considering the nature of offences, mitigating factors and the statutory limitation, I impose an aggregate punishment of **9 months imprisonment term** for 1st and 2nd counts of Rape. Considering the same grounds, I impose another **5 months imprisonment term** for the 3rd count of Sexual Assault. Both punishments are to be served concurrently.

19. I have deviated from the accepted tariff for both offences considering the limitation of 2 years maximum imprisonment term for young person imposed by section 30(3) of the Juvenile Act.

20. Now I will consider whether your punishment should be suspended.

21. Despite issuing several notices to Department of Social Welfare for your Social Background Report, they failed to file the same. Then the court gathered certain information from your mother in open court. Your mother informed court that you behave well at home.

22. Rehabilitation aspect of punishment often outweighs the deterrence effect of it with regards to young and first offenders. However, the court has to strike a balance between the seriousness of the offence you have committed and the

leniency shown to juveniles based on their rehabilitation, when deciding an appropriate punishment for you.

23. Therefore the court decides to suspend your punishment partially, giving you an opportunity to rehabilitate yourself. Accordingly you are ordered to serve 2 months imprisonment term from both punishments, at the Juvenile Boys Rehabilitation and Development Center. I suspend the balance 7 month from the aggregate punishment for the 1st and 2nd counts and the 4 months from the punishment for count 3, for a period of 2 years, in terms of section 26 of the Sentencing and Penalties Act. You have spent 28 days in remand for this case and I deduct such period from each imprisonment term in terms of section 24 of the sentencing and Penalties Act. Accordingly, you actual imprisonment term to be served is **1 month form each punishment**, which will run concurrent to each other.
24. Your imprisonment term should start with immediate effect. Major part of this period falls within the school holidays. However, the authorities at the Juvenile Boys and Rehabilitation Center are directed to take steps within their purview, to ensure that your studies are not discontinued due to this punishment.
25. In addition to above punishment, I order to place you on probation for a period of 1 year, with following specific conditions, with the supervision of the probation officer, Department of Social Welfare, Suva Office, acting under the section 15(1)(e) of the Sentencing and Penalties Act 2009 and section 3(1) of the Probation of Offenders Act.

Conditions

- i. *Undergo counselling with the assistance of the Department of Social Welfare*
- ii. *Be in good behaviour*

Counselling should start while you are serving your punishment at the Juvenile Boys and Rehabilitation Centre.

26. The court clerk is advised to send a copy of this order to the Probation Officer, Suva office.

27. The nature of the punishment and the effect of the Probation Order are explained to you in court. You are required to be in good behaviour. If you breach the order and re-offend, he will be charged under section 5(2) of the Probation of Offenders Act. And also, if you commit any other offence during the suspension of your imprisonment term, the suspended term may be activated.

28. As this court has exercised the extended jurisdictions from the High Court, parties may appeal to the Court of Appeal within 30 days, with the leave of court.

Summary of the punishment

1st & 2nd count - 1 month to be served - 7 months - Suspended for 2 years

3rd count - 1 month to be served - 4 months - suspended for 2 years

Each imprisonment term to be served concurrent to each other

Probation Order for 1 year with condition



Geethani Wijesinghe
Resident Magistrate

At Suva

18th April 2019