

IN THE RESIDENT MAGISTRATES COURT
AT SUVA- CRIMINAL JURISDICTION

Criminal File No. 255 of 2020

BETWEEN: State

Prosecution

AND: Simione Tugi

Accused

Appearances

For the State : Woman Corporal Neisamu

For the Accused : Mr. Varinava & Mr. Waqanivavalagi (LAC)

Note: Complainant's name is anonymised as the complainant is a juvenile.

SENTENCE

Background

1. The Accused is charged with the following offence:

CHARGE

(COMPLAINT BY PUBLIC OFFICER)

Statement of Offence [a]

Buying Minors Under the Age of 18 Years For Immoral Purposes: Contrary to Section 227(1)(b) of the Crimes Act 2009.

Particulars of Offence [b]

Simione Tugi between the 1st day of January 2015 and 28th day of January, 2015 at Nabua in the Central Division obtained possession of C.T, a minor under the age of 18 years for illicit sexual intercourse with others.

2. The Accused in the presence of his counsel had elected a Magistrate court trial and indicated that he was willing to take his plea.
3. As such the charge was put to the accused in a language he understood.
4. He indicated that he understood the charge and he pled guilty to the offence.
5. When the summary of facts was read to him he admitted the same.
6. The facts show that the Accused in between 1st and 28th January 2015 had approached the complainant (16 years at the time) at a Kava shop in Nabua asking her whether she was willing to make some money.
7. When the complainant agreed, the accused during the period of offending had arranged twice for men to have sexual intercourse with complainant where money was exchanged.
8. The complainant later filed a complaint at the Nabua Police station and as a result the accused was arrested.
9. Counsel for the accused has filed written mitigation which has been considered by the court.
10. The most pertinent mitigating factor is the fact that the accused is a first offender and had spent time in remand.

Maximum Penalty and Tariff

11. The maximum penalty for this offence is twelve (12) years imprisonment.
12. There are no established tariffs.
13. In reaching the appropriate sentence the court considers Section 4(1) of the *Sentencing and Penalties Act 2009* which it regurgitates herein below as follows:

“Sentencing Guidelines

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes....”

14. In *Laisiasa Koroivuki v the State* (Criminal Appeal AAU 0018 of 2010) his Lordship 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".

15. Considering the gravity of offending and the accused's culpability, this Court considers that a starting point of sixty (60) months imprisonment is proper.
16. The aggravating features of the offence are already embedded in the offence itself, as such there shall be no addition under aggravating factors.
17. Considering mitigation which has been presented the court deducts fifteen (15) months to reflect that the Accused has a prior clean record. This brings the sentence to a period of forty five (45) months.
18. The Supreme Court specifically his Lordship Marsoof JA in *Qurai v State* [2015] FJSC 15; CAV24.2014 (20 August 2015) set out the appropriate discounts that courts of first instance must have regard to when sentencing accused persons whom have pled guilty. This court regurgitates verbatim the same as follows:

“[56] This Court takes cognisance, as it is bound to in terms of section 4(2)(b) of the Sentencing Decree, the existence in Fiji of a sentencing practice of allowing a discount of one-third of the sentence for an early guilty plea...”

19. Given the early plea of guilty, the court deducts one third (1/3) from the remaining forty five (45) months imprisonment because the accused's guilty plea has saved the complainant from relieving the traumatic experience in a court room situation.

20. As a result of the one third (1/3) deduction for the guilty plea the final imprisonment term is thirty (30) months.
21. The accused had spent one day in remand and as such although Section 24 of the *Sentencing and Penalties Act 2009* prescribing that the said period must be deducted, the court has already considered the same as a mitigating factor, where a deduction has already been made.
22. As such the final sentence that the accused shall serve is thirty (30) months imprisonment.
23. Pursuant to Section 18 (1) of the *Sentencing and Penalties Act 2009* the court imposes twenty four (24) months as the non-parole period.
24. Therefore Simone Tugi for this offence you are sentenced to serve an immediate custodial sentence of thirty months (30) imprisonment with a non-parole period of twenty four (24) months.
25. The clerk will explain this sentence to the accused.
26. 28 days to appeal.


JEREMATA N.L SAVOU
Resident Magistrate
17th December 2021

