

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Criminal Case No. 476/2023

BETWEEN: STATE

AND: S.G

AND: A.G.G

AND: S.A.N

PROSECUTION

ACCUSED

FIRST JUVENILE

SECOND JUVENILE

Counsel: WCPL 4897 Venu Singh for Police Prosecution
 Ms. B. Kumari for the Accused
 Ms. L. Naikawakawavesi for the First Juvenile
 Ms. M. Totovosau for the Second Juvenile

Date of Prosecution's Case: 15 January 2025
Date of NCTA Ruling: 14 February 2025
Date of Defence's Case: 4 June 2025
Date of Judgment: 12 December 2025
Date of Sentence: 19 December 2025

SENTENCE

Introduction

1. The names of the victim, Accused and the Juveniles are suppressed for the purposes of recording and publication.
2. On 12 December, 2025, the Court found the Accused and the two Juveniles guilty as charged for 1 count of Indecent Assault contrary to section 212(1) of the Crimes Act 2009. The particulars of the offence are:

Statement of Offence

Indecent Assault: *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

S.G, A.G.G and S.A.N on the 19th day of November 2023 at Kasaitar, Ba in the Western Division unlawfully and indecently assaulted J.J.K a 10 year old child by touching his buttock.

3. I now convict the Accused as charged.
4. The brief facts are as follows:
 - a. On 19 November 2023 at around 5:20pm, the victim he had been looking for his father when the Accused told him that his father present with them. Present with the Accused were the two Juveniles - S.A.N and A.G.G.

- b. The victim testified that somebody then pushed him down which caused him to fall, land on his stomach and then the First Juvenile boy held both his hands and the Second Juvenile held both his legs.
- c. The victim stated that the First Juvenile pulled his shorts halfway then the Accused pulled his shorts and touched his buttock.
- d. The victim explained that he had been screaming to leave him and as this had happened to him for the first time, he did not know what to do. He stated that he did not like it when they had touched his private part.

Objective Seriousness

5. Considering the sexual nature of the crime, I find the objective seriousness of this crime is materially significant.

Sentencing Regime

6. The maximum penalty for the offence of Indecent Assault is 5 years imprisonment.
7. In the case of ***Rokota v State*** Criminal Appeal No. HAA0068 of 2002 (23 August 2002) Her Ladyship Justice Shameem when dealing with an appeal of Indecent Assault under the now repealed Penal Code which had a maximum penalty of 5 years imprisonment with or without corporal punishment stated:

"Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.

These are the general principles which affect sentencing under section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in particularly serious cases, a five year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault of a non-penetrative and fleeting type. Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than these."

8. Thus, the tariff would be 12 months to 4 years with 5 years being more appropriate for serious cases and non-custodial sentence being more appropriate for cases where the ages of the victim and the accused are similar, and the assault is of a non-penetrative and fleeting type.
9. The above tariff was also recently used by His Lordship Justice Sharma in ***State v Singh*** Criminal Case. HAC 048 of 2021 (21 June 2024).

Mitigating and Aggravating Factors

10. The Court notes that mitigation offered by your counsels; however, personal circumstances and family background holds very low mitigatory value in this offending (vide *Raj v State* Appeal No. CAV 0003 of 2014 (20 August 2014).
11. Further, the Court was informed that the Accused is a first offender.
12. In considering the aggravating factors in this matter, the Court finds that your actions have traumatized the victim given that he was scared as such an action had never been perpetrated against him previously.

Sentence

13. In sentencing the Accused, considering that you were the principal offender and considering the objective seriousness, in this case it is appropriate to have a starting point towards the lower end of the tariff. I accordingly select 15 months as the starting point.
14. I will then add 6 months for the aggravating factor mentioned at paragraph 11 herein, making it a total of 21 months imprisonment. For your mitigating circumstances including the Accused having no prior convictions, I will deduct 12 months leaving you with a balance of 9 months imprisonment.
15. Section 26(1) of the Sentencing and Penalties Act allows a court to make an order suspending the whole or part of the sentence if it is satisfied that it is appropriate to do so in the circumstances whilst section 26(2)(b) provides the Magistrates Court with the discretion to suspend a sentence where the sentence does not exceed 2 years.
16. Thus, considering that the assault was a fleeting type and in conjunction with the Accused's previous good character coupled with his chances of rehabilitation, I am of the view that this is a case that can be suspended as the final sentence does not exceed 2 years. I will suspend the 9 months imprisonment term for a period of 3 years.
17. If you commit any crime during the 3 years, you are liable to be charged and prosecuted for an offending pursuant to section 28 of the Sentencing and Penalties Act.
18. Any party aggrieved with this decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate