

IN THE SUPREME COURT OF FIJI  
Appellate Jurisdiction  
CRIMINAL APPEAL NO. 33 OF 1981

Between:

PITA MIKEYA BAKAYA

APPELLANT

v.

R E G I N A M

RESPONDENT

Appellant in Person  
Mr. M. Raza for the Respondent.

J U D G M E N T

The appellant on the 16th February, 1981, pleaded guilty to 6 counts of defilement of a girl between thirteen and sixteen years of age. He was convicted on all 6 counts by the Magistrate's Court Nausori and sentenced to 4 years imprisonment on the first count, 2 years on the second and third counts and 1 year on each of the other offences, all to be served concurrent with the term imposed on the first count.

The appellant appeals against sentence.

The facts given by the prosecution to the Magistrate disclose that the girl who was born on the 2nd August, 1966, is the daughter of one of the appellant's 4 de facto wives. He had been living with the girl's mother for 2 years prior to the commission of the first offence on the 1st August, 1980, the day before the girls 14th birthday.

The appellant is 29 years of age and is a driver by occupation. He has two prior convictions, a minor one over seven years ago and an assault occasioning actual bodily harm late last year for which he was bound over.

The Magistrate was told that the girl called the appellant 'father' and in sentencing the appellant the Magistrate commented in strong terms that the appellant had pretended to be a father to the girl and acted like a beast.

In my view this was not one of those cases where a person in position of trust such as a school teacher or a person in loco parentis has defiled a young girl although the Magistrate treated it as such. The girl's mother was one of four women the appellant was living with and he had been living with the mother for only 2 years. The appellant had no legal or moral obligations with regard to the girl who at 14 years of age can have been in no doubt about his relationship with her mother and that he was not her father.

On the 4th February, 1981, the appellant assaulted the girl's mother and chased her away from the house but the girl stayed with him. The mother did not report the matter to the police until 10 days later which lends credence to the appellant's contention that she did so because of jealousy. There is no suggestion that he kept the girl in his house by force and it must be assumed that she was a willing party.

The age of the appellant is such that a custodial sentence was called for but in my view four years imprisonment is excessive.

Grant C.J. in criminal appeal Solomone Qito v. Reginam Cr. App. 37 of 1978 considered a case where over a period of time a close relationship developed between a girl in her 11th year and the appellant aged 31 where the appellant had pleaded guilty to a similar offence and was sentenced to 5 years imprisonment. The sentence was reduced to 3 years, Grant C.J. pointing out that a clear distinction must be drawn

between this type of offence and rape. (R. v. Petero Ravuci Review No. 13 of 1977).

The instant case is not nearly as bad as Solomone Qito's where a child not yet 12 was involved and the man was 31 years of age.

The sentence is in my view too severe. The sentences on the first three counts are quashed and in substitution a sentence of 18 months imprisonment is imposed on each count, the sentences on the 2nd and 3rd counts as with the other three counts to be concurrent with the sentence on the first count.

I would add only one observation that where the facts disclose an association between a girl and a man over a period of time charging a man with an offence on a number of occasions, they have sexual intercourse resulting in this case in 6 counts is both unnecessary and prejudicial.

In Taylor & Ors. v. R. (1977) 64 Criminal Appeal Report 182 the three appellants had admitted having sexual intercourse with a 14 year old girl on many occasions but they were only charged with sample offences.

*R. G. Kermode*  
(R.G. KERMODE)  
J U D G E

S U V A,

17 JULY, 1981.