

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 252 of 2021

STATE

vs.

JOELI RAVUALALA BAKOROCAU

Counsel: Ms. K. Semisi for the State
Mr. T. Varinava for the Accused

Date of trial / pleading: 21st February 2023
Date of Sentence/Mitigation Submission: 22nd February 2023
Date of Sentencing: 01st March 2023

SENTENCE

(The name of the victim is suppressed she will be referred to as “SB”.)

Introduction

1. The Director of Public Prosecutions has charged the accused for the following offences as per the Amended Information dated 21st February, 2023:

COUNT ONE

Statement of Offence

DEFILEMENT OF YOUNG PERSON BETWEEN 13 AND 16 YEARS OF

AGE: Contrary to Section 215 of the Crimes Act, 2009.

Particulars of Offence

JOELI RAVUALALA BAKOROCAU between the 1st day of January 2021 and the 2nd day of November 2021 at Nasinu in the Central Division had unlawful carnal knowledge of **SB**, a person being above 13 years and under the age of 16 years.

2. You Joeli Ravualala Bakorocau being aware and well advised of the legal effects, did plead guilty to the above count, in the presence of your Counsel. This Court was satisfied that you fully comprehended the legal effects and that your pleas were voluntary and free from influence. You did so plead guilty at the first available opportunity. When the State presented the summary of facts, you accepted and admitted committing defilement of a young person on the 2nd day of November 2021, punishable under section 215 of the Crimes Act. I am satisfied that the summary of facts covers all the ingredients of the said offence and accordingly convict you on your own plea of guilt.

Circumstances of the Offending

3. The facts according to the summary of facts is that the complainant “SB”, was between 13 -14 year old female Year 9 student of Kinoya Village and the accused Joeli Ravualala Bakorocau, 23 year old unemployed male of Kinoya Village. The complainant and the accused are related and the accused is the complainant’s paternal grandfather’s cousin. There is a domestic relationship between the complainant and the accused. Her parents are Semisi Tamaivalu and Heilala Vika. The complainant’s parents have remarried and she was raised by her paternal grandparents and the grandmother passed away in the year 2015 and she lived with her paternal grandfather in his house at Kinoya Village.
4. Round the beginning of the year 2021, the accused has come to live in Kinoya Village. The accused is the complainant’s paternal grandfather’s cousin from Verata in Tailevu. During the Covid-19 pandemic, the accused was laid off from work and resided in a small shed beside the complainant’s grandfather’s house in Kinoya village.

5. Sometime between the 1st January 2021 and the 2nd November 2021 at approximately 12pm, the complainant was at Vunidakua Settlement at Cunnigham, Stage 4 at a house owned by another grandfather, namely, Kalivati Vakalala. The complainant and her family spent the weekend at his residence in order to attend a birthday party. There were other relatives, including the accused. The accused started to signal to the complainant to go to the toilet. The accused then gone to the toilet and called the complainant in. When the complainant went inside the accused kissed her and pulled down her shorts and panty and made her bend down and inserted his penis into her vagina. While the accused was inserting his penis inside the complainant's vagina, one of the complainant's uncle's, namely, Mosese Mamule Buinimasi knocked on the toilet door. The accused stopped and he had hidden behind the toilet door when SB quickly pulled up her panty and shorts and opened the door.
6. Her uncle questioned and she had told him that they were not doing anything inside the toilet. She was then slapped on the face and taken to her aunt, Litia Ciriyaawa's house and questioned and beaten with a broom handle. The complainant father's was informed about the alleged incident by her aunt and her father had taken her and with the accused to the Nabua Police Station. The accused have had sexual intercourse with the complainant on several occasions during this period.

Sentencing Regime

7. For the offence of defilement section 215 of the Crimes Act prescribes a maximum penalty of 10 years imprisonment. The tariff as laid down by **State v Lal** [2019] FJHC 565; HIR001.2019 [Labasa] (10th June 2019), is as follows. Sentences passed ranges from suspended sentence (usually where the accused and victim are both of same or similar age and are in relationship) to 3 or 4 years imprisonment where the accused is in a position of trust in relation to the victim and is much older.
8. Justice Prematilaka in his ruling dated 13 August 2021 in **State v Chand** [2021] FJCA 209; AAU75.2019 observed that there is a disparity in sentencing accused persons in defilement offences. His Lordship also observe that there is no uniformity as to the tariff and sentencing guidelines and opined that until such time as guidelines may be determined that Judges follow the well-established tariff of suspended sentence to 4

years for defilement being mindful that a sentence even above the upper limit of 4 years can be meted out with reasons.

9. The sentences for defilement range from a suspended sentence to four years imprisonment (*Etonia Rokowaqa v State Criminal Appeal No. HAA 37 of 2004*). It appears that suspended sentence is reserved for offending is between persons of similar age engaging in consensual intercourse in relationship or friendship of a virtuous relationship whilst the higher end of the tariff is for offenders who are older and in position of trust with the victim (vide - *Elia Donumainasuva v State Criminal Appeal No. HAA032 of 2001, State v Roqica & Others Criminal Appeal No. HAA037 of 2002S*).
10. The sentence prescribed for defilement was 5 years imprisonment under the Penal Code but in 2009 with the implementation of the Crimes Act the maximum penalty was increased to 10 years imprisonment. This is a clear indication that the Legislature has considered this offence as being serious.

Objective seriousness, culpability and harm of the offending

11. Defilement committed by the accused is an instance of sexual intercourse between a young victim of 14 years and the Accused who was 23 years. The Accused had no doubt has won the confidence and enticed the victim of immature age to have sexual intercourse with him. He has no doubt induced an adolescent child to engage in unlawful sexual intercourse.
12. Defilement of young adolescent children is a serious offence indeed and it seems to be prevalent in Fiji. The Accused had very artfully approached a vulnerable victim who happens to be a granddaughter to him in view of the familial connection though the accused was relatively young in age. This is not acceptable conduct by any standard of decency. The conduct of the Accused acting in total disregard of the protection afforded to young children and the prohibition of sexual intercourse with adolescent makes his offending necessarily serious. Psychologists certainly has shown that the effect of sexual abuse on young children is profound and long lasting.

13. Defilement is a physical invasion committed on the victim under a deceptive circumstance especially when the offender is older even by a few years to the victim. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.

Emotional and Psychological Harm

14. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the victim impact statement the victim states that when the Accused moved in with them, his all caring ways and with all he has done to her, she believed that it was love but she did not know that he was just using her. After what had happened, it has created a lot of trouble in her family and she had to leave home and have not been attending school since she was sent to Lau. She says that after this incident she is reluctant to talk to people and have not been able to share her problems with anyone as it was very embarrassing especially at her age. It is clear from the victim impact statement that your offending has had a very significant and long-lasting psychological impact on the minor a vulnerable complainant which must be considered in sentencing.

15. The aggravating factors are as follows:

- (1) The victim was vulnerable as she was around 14 years;
- (2) There was a considerable disparity in age between you and the complainant. The complainant was 14 years old at the time you committed these offences on her and you were 23 years and so you were 09 years her senior in age;
- (3) There was a serious breach of trust;
- (4) This involved planning, scheming and premeditation;
- (5) You took advantage of the complainant's vulnerability and innocence; and
- (6) You have exposed the innocent mind of a child to sexual activity at a tender age you had no regard to her rights as a child and her right to have an unmolested childhood.

16. Mitigating Factors are as follows;

- (1) You are a relatively young person;

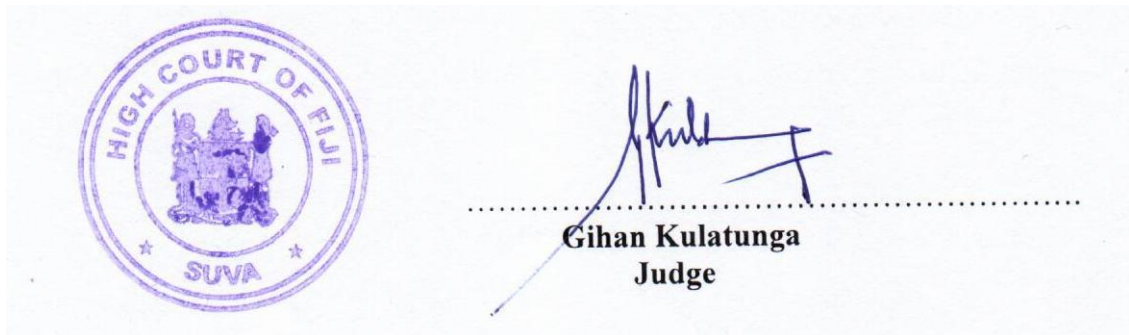
- (2) You have no previous adverse record and is a person of good character;
- (3) You are now 25 years of age;
- (4) from the beginning you did admitted having sexual intercourse and you are remorseful and regret what you did; and
- (5) You pleaded guilty at the earliest.

Sentence

17. Upon considering the gravity and the objective seriousness of the offence of defilement of a young person to my mind it is reasonable to pick 2 years' imprisonment as the starting point of your sentence for this offence. I am inclined to add 2 years for the above-mentioned aggravating factors bringing the interim sentence of 4 years imprisonment.
18. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard including for the previous good character and youth, I will consider a reduction of 1 year and 6 months which will bring the sentence to 2 years and 6 months imprisonment. As for the early guilty plea which is around a 1/3rd reduction, I will grant you a discount of 6 months which thus brings your sentence down to two (2) years' imprisonment.
19. Having considered all the facts before this court, I would impose a sentence of 2 years imprisonment.
20. The Defence Counsel submitted that this is a fit matter for the Court to consider acting under section 26(2) of the Sentencing and Penalties. Act. The prosecution had no objection to this application.
21. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence should only be exercised by a High Court where the custodial sentence does not exceed 3 years and as opined in the Sentence Ruling in *State v Aiding Zhang* [2017] HAC 061 if there be circumstance which are exceptional.
22. In the circumstances of this offending, and considering the statement of the victim made to the police on 20th February 2023, I am of the considered view that this is a fit

case to suspend the sentence. Since the final sentence has not exceeded 3 years in this case and you are a first time offender and still in your youth, I am minded to consider the application made on your behalf to suspend the sentence.

23. Thus, upon duly considering the material before me, I impose a sentence of 2 years imprisonment and suspend the same for a period of 7 years.
24. The consequences of any violation of a suspended term is explained to the Accused.
25. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to make an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.
26. You have 30 days to appeal to the Court of Appeal if you so desire.



At Suva

01st March 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused.