IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 023 OF 2024
[Suva High Court: HAC 007 of 2023]

BETWEEN : **THE STATE**

Appellant

AND : **SEFORANA TIPO MERASEU**

Respondent

Coram : Qetaki, RJA

Counsel : Ms. S. Shameem for the Appellant
Ms. S. Prakash for the Respondent

Date of Hearing : 1 December, 2025

Date of Ruling : 10 March, 2026

RULING

(A). BACKGROUND

[1] The respondent was charged with one count of Sexual Assault contrary to section 210(1) (a) of the Crimes Act 2009 and one count of Rape contrary to section 207(1) & (2)(b) of the Crimes Act 2009. He pleaded not guilty to both charges and the matter proceeded to trial. After trial, the respondent was convicted and sentenced on 19th April, 2024 to 10 years 3 months and 12 days imprisonment with a non-parole period of 6 years 8 months and 12 days.

[2] The State being dissatisfied with the sentence, filed a timely appeal against sentence on 16th May 2024, 27 days from the date of sentence.

(B). THE FACTS IN BRIEF

[3] In the late evening of 27 December 2022, DS and her younger brother were sleeping on the bed in their bedroom whilst DS's mother and Mr. Meraseu slept on the floor. DS was awoken from her sleep when she felt a hand on her body. She kept her eyes closed, no doubt frightened by this assault on her. She felt the hand rub her vagina. She then felt a finger poke inside her vagina. The poke was painful causing DS to open her eyes. When she did so, she saw Mr. Meraseu sitting facing her. Mr. Meraseu apologized to DS and then left the bedroom to go to the washroom. DS immediately woke her mother and informed her of what had happened. When Meraseu returned from the washroom DS's mother confronted and punched Mr. Meraseu. A report was made to the police on 28 December 2022. Mr. Meraseu was immediately arrested and has spent a large part of the period since that time in remand. Following a defended hearing Mr. Meraseu was found guilty by the trial Judge (per Tuiqereqere J) of the two counts of sexual assault and digital rape.

(C). GROUND OF APPEAL

[4] The appeal is on the following ground:

Ground 1

That the learned sentencing judge failed to give adequate consideration to the aggravating factors in the case, and therefore rendering the sentence to be manifestly lenient.

(D). APPELLANT'S CASE

[5] The State's complaint is that the learned sentencing Judge allowed extraneous or irrelevant matters to guide or affect him in calculating the aggravating factors and incorrectly deducted time spent in remand from the non-parole period from the head sentence and non-parole period separately. The miscalculation rendered the final sentence to be below the tariff and drastically lenient.

[6] This was a case where the respondent had gone to trial. It was not a case of guilty plea at any stage. The respondent was the stepfather of the complainant hence there was a gross breach of trust and the respondent was 55 years old whilst the complainant was 14 years old-an age disparity of 38 years.

Comparison with Other cases

[7] **State v Buaraki** [2019] FJHC 284; HAC64.2018 (3 April 2019), the accused had pleaded guilty to one count of rape and procurement another to witness an act of gross indecency of his stepdaughter. The final sentence imposed by the Court for the offence of rape was 11 years and 5 months with a non-parole period of 10 years.

[8] **State v Narema** [2024] FJHC 523; HAC130.2024 (19 August 2024), the accused pleaded guilty to one count of sexual assault and one count of rape of his stepdaughter. In calculating the sentence, the sentencing Judge selected a starting point of 11 years and upon considering similar aggravating factors as to the present case added 4 years for aggravating factors then deducted 2 years for mitigating factors. Further deducting the afforded one third deduction for early guilty plea, the accused's actual sentence was 8 years 3 months and 25 days with a non-parole period of 6 years 7 months and 25 days.

[9] In both the above cases, the accused had pleaded guilty. In the present case the sentence was after trial, hence the respondent ought to receive more as in **State v Sade** [2024] FJHC 503; HAC010.2021 (15 August 2024), where after trial the accused was found guilty of one count of sexual assault one count of rape of his stepdaughter. The accused was sentenced to an aggregate term of 13 years imprisonment with a non-parole period of 11 years less the time spent in remand which brought the actual sentence to 12 years and 9 months imprisonment with a non-parole period of 10 years and 9 months.

[10] In this case, the accused pleaded not gulty to one count of sexual assault and one count of rape. The 14-year-old victim had to relive the trauma by testifying in Court against her stepfather. The head sentence, actual sentence and non-parole period was not justified and gravely lenient for a case after trial. The appellant submits that there is a reasonable prospect of success in this appeal and therefore leave should be allowed.

(E). RESPONDENT'S CASE

[11] The respondent submits, it is unclear what the appellant's complaint is; Is it the aggravating factors, or calculation of time spent in remand or on extraneous matters considered by the learned sentencing judge on the non-parole period? At the appellate level the appeal points to the total sentence and not the steps or the weight given by the sentencing judge to the various facts or matters. (Quoted from paragraphs [9] to [23] of judgment.)

[12] The respondent submits that the grounds of appeal is a mere afterthought-it does not hold any water. The proper approach was established in **Koroicakau v State** [2006] FJSC,CAV 006 of 2005 , that is, to assess whether in all the circumstances of the case the sentence is one that would reasonably be imposed by a sentencing Judge: **Sharma v State** [2015] FJCA 178; AAU48.2011 [3 December 2015], and if outside the range whether sufficient reasons have been added by the sentencing Judge.

[13] The learned sentencing Judge correctly considered the factors to be taken into account. He used the correct sentencing law and authorities. In **Aitcheson v State**, 6 years was added as aggravating factors which was justified. Contrast with this case, where 2 ½ years aggravating factors. The victims were aged 6 and 11 years and the abhorrent acts (6 counts of rape) was prolonged over an 8 year period from 2007 to 2015.

[14] The learned Judge found the accused's act was impulsive and not planned-he was correct in adding 2 ½ years to his starting point of 11 years bringing the total to 13 ½ years.

[15] The learned Judge took into account/consideration that appellant was a first offender and thus encouraged the rehabilitation of the respondent.

[16] The learned Judge was correct in his deduction of time spent in remand by the respondent and used his discretion as allowed by law.

[17] The learned sentencing Judge gave reasons for his determination.

[18] In light of **Koroicakau v State** (supra), the argument by the appellant misunderstands the sentencing process-it is not a mathematical exercise.

[19] In conclusion, the appeal does not have merit. The Judge had given reasons/explanation for his sentencing.

(F). ANALYSIS

[20] For an appeal against sentence to be successful, there must be an arguable or reasonably arguable case. The appellant must bring its case in line with the factors established in **Kim Nam Bae v The State** [1999] FJCA 29, that is where a Judge;

(i) Acted upon a wrong principle;

(ii) Allowed extraneous or irrelevant matters to guide or affect him;

(iii) Mistook the facts;

(iv) Failed to take into account some relevant consideration.

Sentencing Regime

[21] The learned sentencing Judge considered the Sentencing regime in paragraphs [9] to [13] as reproduced below:

> *"[9] The maximum penalty prescribed for rape contrary to s 207(1) and 2(b) and (3) of the Crimes Act is life imprisonment. The tariff is between 11 years and 20 years imprisonment. As Gates CJ stated in Aitcheson v The State [2018] FJHC 29 (2 November 2018);*
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> > *The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003 of 2014 [20 August 2014] should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final outcome. The increased tariff represents the denunciation of the courts in the strongest terms.*
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> *[10] With respect to the offence of sexual assault, Madigan J stated in State v Laca [2012] FJHC 1414 (14 November 2012):*
>
> > *[6] The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum** HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range should be 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.*

[7] A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

> ***Category 1*** *(the most serious).*
>
> *Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*
>
> ***Category 2***
>
> *(i) Contact between the naked genitalia of the offender and another part of the victim's body;*
>
> *(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
>
> *(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*
>
> ***Category 3***
>
> *Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)."*

[11] Both counsel agree, as I do, that the facts of this case falls within the category 2 in respect of Mr Meraseu's offending for count one.

[12] ……..The two counts for which Mr Meraseu has been found guilty arise from the same incident and, I am satisfied that it is appropriate to impose an aggregate sentence of imprisonment on Mr Meraseu in respect to the two counts.

[13] Before doing so, it is appropriate to emphasize the following passage from Madigan J in ***State v Tauvoli*** *[2011] FJHC 216 (18 April 2011) at [5]:*

> *Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."*

Head Sentence

[22] The learned sentencing Judge fixed the appropriate starting point of 11 years. This is based on his assessment of the objective seriousness of the offending, having considered,

the maximum sentence prescribed for the two offences, the degree of culpability, the manner in which the offences were committed and the harm caused to the victim. He also considered the Sentencing Guidelines stipulated in section 4 of the Sentencing and Penalties Act.

[23] The learned sentencing Judge considered the relevant aggravating factors which are: Breach of trust; Age disparity; Vulnerable victim; Exposed victim to sexual activity, and Long term consequences. Two and a half years (2 ½ years) was added due to the aggravating factors, taking account of earlier finding that offending was not planned but impulsive and that it occurred on one occasion and did not involve a series of offending.

[24] Two years (2 years) was deducted for mitigating factors, as the accused was a first offender, who was of previous good character until this offending. Balance is eleven and a half years (11 ½).

Non-Parole Period

[25] Having considered section 18 of the Sentencing and Penalties Act; Calanchini J's pronouncement on the issue in **Tora v The State**, and Chandra JA's decision in **Naitini and Others v The State,** Criminal Appeal AAU 102 of 2010 (3rd December 2015), the learned sentencing Judge imposed a non-parole period of 8 years as a *"reasonable parole period".*

Actual Sentence

[26] The period that an offender spends in remand awaiting trial shall be considered as time already served, unless the Court otherwise orders-see section 24 of the Sentencing and Penalties Act. The respondent had already served 1 year 2 months and 18 days. The learned sentencing Judge deducted from actual sentence the remand period. As a result the actual sentence for Mr. Meraseu 10 years 3 months and 12 days actual sentence, with a non-parole period of 6 years 8 months and 12 days. The relevant Order sates:

> *"(i) You are sentenced to a period of 10 years 3 months and 12 days imprisonment with a non-parole period of 6 years 8 months and 12 days."*

[27] The sentencing Judge had deducted the time served on remand in accordance with section 24 of the Sentencing and Penalties Act 2009. But he had done so twice, firstly by reducing the *Actual Sentence,* from eleven and half years (11 ½) to 10 years 3 months and 12 days; Secondly by reducing the *Non-Parole Period* from 8 years to 6 years 8 months. The learned sentencing Judge did not cite any authority to support the double-deduction, and no proper explanations has been given to justify the double deduction, bearing in mind that the appellant also contend that the sentencing judge had taken into account erroneous or irrelevant matters to guide him.

(G). CONCLUSION

[28] Given the above analysis, it is my considered view that there is merit in the ground of appeal. The Full Court can review, whether the sentencing Judge had been influenced or guided by erroneous or irrelevant matters and whether under the facts and circumstances there is a proper explanation or justification for the deductions simultaneously made to the actual sentence and the non-parole period.

Order of Court

1. *Application for leave to appeal sentence is allowed.*

Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors
Office of the Director of Public Prosecutions for the Appellant
Legal Aid Commission for the Respondent