

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 223 of 2019**

**STATE**

**V**

**JOJI SESEVU RAQIO**

**Counsel** : Ms. Saini Naibe with Mr. Taitusi Tuenuku for the State  
Mr. Josaia Niudamu with Mr. S. Toga for the Accused

**Dates of Trial** : 18-20 October 2022

**Judgment** : 12 May 2023

**Sentence Hearing** : 22 August 2023

**Sentence** : 19 September 2023

*The name of the four complainants are suppressed. Accordingly, the first complainant will be referred to as "JN", the second complainant will be referred to as "SV", the third complainant will be referred to as "JV", and the fourth complainant will be referred to as "KR" respectively.*

**SENTENCE**

[1] Joji Sesevu Raqio, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

**FIRST COUNT**

***Statement of Offence***

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

***Particulars of Offence***

**JOJI SESEVU RAQIO**, between the 1<sup>st</sup> day of January 2010 and the 29<sup>th</sup> day of April 2010, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **JN**.

**SECOND COUNT**

***Statement of Offence***

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

***Particulars of Offence***

**JOJI SESEVU RAQIO**, on the 21<sup>st</sup> day of April 2011, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **SV**.

**THIRD COUNT**

***Statement of Offence***

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

***Particulars of Offence***

**JOJI SESEVU RAQIO**, between the 17<sup>th</sup> day of May 2010 and the 20<sup>th</sup> day of August 2010, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **JV**.

**FOURTH COUNT**

***Statement of Offence***

**INDECENT ASSAULT**: Contrary to Section 212 (1) of the Crimes Act 2009.

***Particulars of Offence***

**JOJI SESEVU RAQIO**, between the 16<sup>th</sup> day of May 2011 and the 19<sup>th</sup> day of August 2011, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **KR**.

- [2] You pleaded not guilty to the above mentioned charges and the ensuing trial was held over 3 days. The 1<sup>st</sup> complainant (JN), the 2<sup>nd</sup> complainant (SV), the 3<sup>rd</sup> complainant (JV), the 4<sup>th</sup> complainant (KR), and Selsoni Waqalala, the father of the 1<sup>st</sup> complainant, testified on behalf of the prosecution. You testified on your own behalf.
- [3] At the conclusion of the evidence and having reviewed the totality of the evidence, this Court found you guilty and convicted you of the first three counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act No. 44 of 2009 (“Crimes Act”). You were found not guilty and acquitted of the charge of Indecent Assault (Count 4).
- [4] It was proved during the trial that, between the 1 January 2010 and the 29 April 2010, at Malake Island in Ra, you unlawfully and indecently assaulted the 1<sup>st</sup> complainant JN, by masturbating of his penis until he ejaculated.
- [5] It was further proved during the trial that on the 21 April 2011, at Malake Island in Ra, you unlawfully and indecently assaulted the 2<sup>nd</sup> complainant SV, by sucking his penis.
- [6] It was also proved during the trial that, between the 17 May 2010 and the 20 August 2010, at Malake Island in Ra, you unlawfully and indecently assaulted the 3<sup>rd</sup> complainant SV, by touching his penis.
- [7] The three complainant’s were all juveniles at the time you committed the above offences on them. It is an admitted fact that the 1<sup>st</sup> complainant’s date of birth is 3 January 1995 and he was 15 years of age at the time of the offending. At the time he testified in Court he was 27. It is an admitted fact that the 2<sup>nd</sup> complainant’s date of birth is 17 January 1995 and he was 16 years of age at the time of the offending. At the time he testified in Court he was 27. The 3<sup>rd</sup> complainant’s date of birth is 25 December 1996 and he was 14 years of age at the time of the offending. At the time he testified in Court he was 25.
- [8] You were the school teacher of the three complainants. It is admitted that you were teaching in Malake Village School in the years 2010 and 2011.

**[9]** Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

*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.*

**[10]** Furthermore, Section 4(2) of the Sentencing and Penalties Act provides that a Court must consider the following factors when sentencing an offender:

*(2) In sentencing offenders a court must have regard to —*

*(a) the maximum penalty prescribed for the offence;*

*(b) current sentencing practice and the terms of any applicable guideline judgment;*

*(c) the nature and gravity of the particular offence;*

*(d) the offender’s culpability and degree of responsibility for the offence;*

*(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;*

*(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;*

*(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;*

*(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;*

*(i) the offender's previous character;*

*(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and*

*(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.*

[11] Joji Sesevu Raqio, I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

[12] His Lordship Justice Goundar in *State v Apisai Takalaibau* – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that “A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community.”

[13] The offence of Sexual Assault in terms of Section 210 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[14] Section 210 (2) states: “*The offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in sub-section (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.*”

[15] In the cases of *State v. Abdul Khaiyum* [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012) and *State v. Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.

[16] It was held in *State v Laca* (supra) “The top of the range is 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.”

“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).”

[17] From the facts of this case it is clear that there was contact with the genitalia of the three complainants by using part of the accused's body other than the genitalia. This would clearly come under category 2 (ii) above.

[18] In determining the starting point within the said tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“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."*

**[19]** In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, I commence your sentences at 2 years for the three counts of Sexual Assault.

**[20]** The aggravating factors are as follows:

- (i) You were a Teacher of the Malake Village School. The three complainants were all students of the school and you were their Class Teacher. Being their Teacher you should have protected and safe guarded the complainants. Instead you have breached the trust expected from you and the breach was gross. In addition, you abused your authority and position as their Class Teacher to perpetrate these offences against the complainants.
- (ii) There was a large disparity in age between you and the three complainants. The complainants were between the ages of 14 to 16 years, at the time you committed these offences on them. At the time of the offending you were 29-30 years of age. Therefore, you were over 10 years older than the three complainants.
- (iii) You took advantage of the three complainants' vulnerability, helplessness and naivety.
- (iv) You have exposed the innocent mind of children to sexual activity at such a tender age and thereby robbed the three complainants of their innocence.
- (v) The frequent prevalence of such sexual offences in our society today.
- (vi) You are now convicted of multiple offending in respect of multiple victims.

**[21]** Considering the aforementioned aggravating factors, I increase your sentences by a further 5 years. Now your sentence is 7 years for the counts of Sexual Assault.

**[22]** Joji Sesevu Raqio, you are now 42 years of age (Your date of birth being 2 June 1981). You are married with one child (a son) who is now 2 ½ years old. You are said to be the sole breadwinner of your family. You are solely responsible for the payment of their rent, groceries, bills, fuel and other household expenses.

**[23]** You are a primary school teacher by occupation. You have been serving in that capacity for over 20 years.

**[24]** Unfortunately, the above are all personal circumstances and cannot be considered as mitigating circumstances.

**[25]** You are a first offender. Even the State confirms this position. Therefore, this Court considers you as a person of previous good character. It is stated that you are extremely remorseful for your actions. You have also promised not to re-offend and submitted that you have learnt a bitter lesson due to your actions. Accordingly, considering the aforesaid mitigating factors I reduce 3 years from your sentences. Now your sentences will be 4 years imprisonment for each of the counts of Sexual Assault.

**[26]** In mitigation it was submitted that this case has been hanging over your head since 2014. I concede that it has taken nearly 10 years for conclusion of this matter. However, the fact remains that these are serious offences committed by you on three juvenile complainants. Therefore, I am of the opinion that no further discount should be granted to you in lieu of this fact.

**[27]** In the circumstances, your sentences are as follows:

Count 1- Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 4 years' imprisonment.

Count 2 – Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 4 years' imprisonment.

Count 3 – Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 4 years' imprisonment.



I order that all sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 4 years.

[28] Accordingly, I sentence you to a term of 4 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 2 years of that sentence.

[29] Section 24 of the Sentencing and Penalties Act reads thus:

*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*

[30] I find that you have not been in remand custody for this case a single day. Even on the day this Court found you guilty of the three charges of Sexual Assault and convicted you, you were permitted to remain on the same bail terms and conditions that had been imposed on you.

[31] In the result, your final sentence is as follows:

Head Sentence - 4 years' imprisonment.

Non-parole period - 2 years' imprisonment.

[32] You have 30 days to appeal to the Court of Appeal if you so wish.

   
Riyaz Hamza  
**JUDGE**  
**HIGH COURT OF FIJI**

AT LAUTOKA

Dated this 19<sup>th</sup> Day of September 2023

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Lautoka.**  
**Solicitors for the Accused** : **Niudamu Lawyers, Barristers & Solicitors, Lautoka.**