

and you took the opportunity to make a secret entry to the house at around midnight when the victim was sleeping. You approached her and sat on her lap. You closed her mouth tightly and squeezed her breasts. You took off your trousers and inserted your penis into her vagina. It was painful for the victim. The victim was shocked and scared. She pushed you away successfully and ran to her grandmother. You ran outside of the house. Her grandmother and uncle confronted you and reported the matter to police.

3. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years' imprisonment. [Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
4. In selecting your sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victim, I would select the starting point. The final sentence will be determined after making due adjustments for the aggravating and the mitigating factors.
5. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children, expect elders and relatives in a domestic setting to care and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.
6. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against sexual abuse of

children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that, if anyone yield to this crime will meet with severe punishments.

7. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 11 years from the bottom range of the tariff as the first step in the sentencing process.
8. I identify the following aggravating and mitigation factors:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim.
- (b). You exploited the vulnerability of a child.
- (c). You breached the trust of the victim who is your niece.
- (d). You made a secret entry to the house during midnight to commit the crime.
- (e). You squeezed victim's breast and her mouth to prevent her from seeking help
- (f). The offence is premeditated.

Mitigating Factors:

- (a). In mitigation, your counsel informed that you are a 28 year old casual farmer earning \$150 a month. You are married with a child. You are looking after your elderly parents. Personal circumstances are of little mitigatory value.
- (b). You do not have any previous convictions. You have maintained a clear record over the past 28 years.

9. I add 03 years and 02 months to the starting point of 11 years for above mentioned list of aggravating factors to arrive at an interim sentence of 14 years and 02 months

imprisonment. I reduce 1 year for mitigating factors to arrive at a sentence of 13 years and 02 months imprisonment.

10. According to the State, you had been in remand roughly for two months. The remand period is deducted from your sentence to arrive at a final sentence of 13 years' imprisonment.
11. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 10 years.
12. Summary

Mr. Inia Navakaroko, you are sentenced to an imprisonment term of 13 years with a non-parole period of 10 years. You are eligible for parole when you have served 10 years in the correction facility.

13. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge
Judge

30 November 2023

At Lautoka

Counsel:

- Office of the Director of Public Prosecution for State
- Niudamu Lawyers for Defence