

**IN THE HIGH COURT**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 103 of 2022**

**BETWEEN:** STATE

**AND:** SAULA MANAWI

**Counsel:** Ms. E. Thaggard for the State  
Ms. R. Raj for the Accused

**Date of Plea:** 8<sup>th</sup> November 2023

**Date of Sentence:** 7<sup>th</sup> December 2023

**SENTENCE**

1. Saula Manawi you were produced in Court charged with the following offences on the Information: -

[COUNT 1]

*Statement of Offence*

**INDECENT ASSAULT:** contrary to section 212 (1) of the Crimes Act 2009.

*Particulars of Offence*

**SAULA MANAWI** between the 1<sup>st</sup> day of January 2021 and the 31<sup>st</sup> day of December 2021, at Navakuru village, Labasa in the Northern Division,

unlawfully and indecently assaulted **LOSENA NAIVOLO** by hugging the said **LOSENA NAIVOLO**

[COUNT 2]

*Statement of Offence*

**RAPE**: contrary to section 207 (1) and (2) and (3) of the Crimes Act 2009

*Particulars of Offence*

**SAULA MANAWI** between the 1<sup>st</sup> day of January 2021 and the 31<sup>st</sup> day of December 2021, at Navakuru village, Labasa in the Northern Division, on the same occasion as Count 1, had unlawful carnal knowledge of **LOSENA NAIVOLO**, a child under the age of 13 years.

2. Initially you had entered a Not Guilty plea to both counts on the 26<sup>th</sup> of September 2023 and the matter was adjourned for pre-trial conference.
3. When the matter was next called on the 8<sup>th</sup> of November 2023 counsel advised that you now wished to take a progressive approach and plead guilty to the first count.
4. When the time came to take the plea, you pleaded guilty to the 1<sup>st</sup> count and confirmed that you were pleading guilty of your own free will and that you did so without any compulsion or incentive in exchange for your plea.

**Summary of Facts**

5. The Court then prepared the following Summary of the Facts, which was read over to you as follows: -
  - The victim in this matter is Losena Naivolo, 11 years old at the time of the offending, student and resides at Navakuru village, Labasa.
  - The Accused is Saula Manawi a.k.a. Papa, 20 years old, farmer and he resides at Navakuru village, Labasa.
  - The Accused and the victim resided in the same village at the time of the offence.

- The Accused has pleaded guilty to one count of Indecent Assault contrary to section 212 (1) of the Crimes Act 2009.
- On an unknown date sometime between the 1<sup>st</sup> of January 2021 to the 31<sup>st</sup> of December 2021, the victim's parents had asked one Na Miri in the village to look after her and her siblings whilst her parents went to the farm.
- The victim and her siblings stayed with Miri and her family throughout the said day. The victim and her siblings had lunch and on the said day there were a total of 11 people inside Miri's house. The Accused is also part of Miri's household.
- The victim recalls when it was dinner time, her parents were not back yet so they had dinner that night at Miri's house.
- After having dinner, Miri had directed the victim to go to their house which is three houses away from their house and get her father's pot.
- The victim followed a track behind her house to get to their house, it was dark along the way and upon reaching their compound, she went to the kitchen and given that she was familiar with their kitchen setup, she was able to enter their kitchen and she knew where the pots were located.
- As soon as she was taking out her dad's pot she could feel someone poking the side of her ribs and hugging her from behind. When she turned she saw the Accused from the light of the torch he was holding.
- The matter was reported to the Police in September 2022.
- He was arrested and interviewed under caution, the interview was video recorded.
- He is a first offender.

6. You admitted the summary of the facts and the Court is satisfied that your guilty plea is unequivocal therefore you are convicted as charged.

**Plea in Mitigation**

7. You are a first offender and your counsel has offered the following plea in mitigation:

- You are 20 years of age and prior to being remanded you were a yaqona farmer earning \$150 per week
- At the time of the offending you were 18 years of age and the victim was 11 years of age.
- The complainant is your cousin and the circumstances of the offending are set out in the summary of facts.
- You support your parents financially.
- You were remanded on the 20<sup>th</sup> day of September 2022 and granted bail on the 1<sup>st</sup> day of March 2023.
- The mitigating factors in your favour include your previous good conduct as a first offender.
- You have pleaded guilty at the earliest opportunity, and you have also expressed remorse for your actions that day.
- Counsel submits that as a young, first offender, you should be granted leniency by this Court and a custodial sentence should be the last resort.
- If the Court is minded to impose a custodial sentence.
- Learned State counsel refers to the case of Ratu Penioni Rokota –v- State [2002] FJHC 168 where the High Court held that the tariff for Indecent Assault ranges from 12 months to 4 years.
- In her remarks, Justice Shameem stated as follows: -

“Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.

These are the general principles which affect sentencing under section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in particularly serious cases, a five year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault of a non-penetrative and fleeting type. Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than these.”

8. The State will not file sentencing recommendations and will leave it to the Court’s discretion to impose an appropriate sentence for the offending in this case.

### **Sentencing Remarks**

9. Saula Manawi you have been convicted of the offence of Indecent Assault contrary to section 212 (1) of the Crimes Act 2009. This offence attracts a maximum sentence of 5 years imprisonment.
10. The accepted tariff for such offences ranges from 12 months to 4 years imprisonment as set out in the authority of Rokota above.
11. The mitigating factors in your favour include your guilty plea and your previous good conduct as a first offender. All the other factors that learned counsel has set out are your personal circumstances and do not tend towards mitigation for the offending in this case.
12. The factors that aggravate the offending are the breach of trust as you followed the victim and committed the offence knowing that she would be all alone as she attended to an errand.
13. Your personal culpability is high and the level of offending here lies at the lower to medium level for such offences. Your actions require a sentence of imprisonment.
14. In sentencing you I adopt a starting point of 12 months and I add 6 months for the aggravating factors identified above.


15. For your previous good character as a first offender I deduct 4 months from your sentence. For your guilty plea I deduct a further 1 month from your sentence leaving you with an interim sentence of 13 months imprisonment.
16. You were remanded from the 20<sup>th</sup> September 2022 to the 1<sup>st</sup> of March 2023 therefore this 7 month period will be deducted from your sentence as time already served leaving you with a final sentence of 6 months imprisonment.
17. Saula Manawi your sentence is 6 months imprisonment. This is a sentence under 2 years therefore it may be suspended in the appropriate circumstances pursuant to section 26 of the Sentencing and Penalties Act.
18. In this instance you have already spent 7 months in remand and since being bailed you have faithfully attended all of your Court dates.
19. After considering all of the above, the Court finds it appropriate to full suspend the sentence.

**Saula Manawi this is your sentence: -**

1. For the offence of **Indecent Assault** – I sentence you to **6 months imprisonment** – suspended for **3 years**.

**30 days to appeal**



  
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**Mr. Justice U. Ratuveli**  
**Acting Puisne Judge**

**Solicitors:**

Office of the Director of Public Prosecution for the State  
Legal Aid Commission for the Accused