

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Crim. Case No. HAC 208 of 2023**

**BETWEEN:** STATE

**PROSECUTION**

**A N D:** STEVEN BEVERLY KALISEWAQA

**ACCUSED PERSON**

**Counsel** : Mr. U. Lal for State  
Mr. T. Varinava for Accused

**Date of Sentence** : 30<sup>th</sup> September 2024

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**SENTENCE**

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1. The Acting Director of Public Prosecution filed this Information, charging you with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment and one count of Sexual Assault, contrary to Section 210 (1) (b) (i) of the Crimes Act, which carries a maximum sentence of ten years imprisonment. The particulars of the offences are:

**COUNT 1**

*Statement of Offence*

**RAPE:** *Contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009*

*Particulars of Offence*

**STEVEN BEVERLY KALISEWAQA** on the 11<sup>th</sup> day of June, 2023 at Nasinu in the Central Division, penetrated the vagina of **NITIKA NEHA** with his penis, without her consent.

**COUNT 2**

*Statement of Offence*

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

*Particulars of Offence*

**STEVEN BEVERLY KALISEWAQA** on the 11<sup>th</sup> day of June, 2023 at Nasinu in the Central Division, procured **NITIKA NEHA** without her consent to commit an act of gross indecency by forcing her to bite her neck.

2. You pleaded not guilty to these two offences; hence, the matter was set down for hearing. However, you then changed your position and pleaded guilty to these offences on September 17, 2024. Furthermore, you admitted the summary of facts read to you in the open Court.
3. Being satisfied that you have fully comprehended the legal effect of your plea and that it was voluntary and free from force and influence, I now convict you of the two offences as charged in the Information.
4. You admitted that you met the Complainant at the Bus stop on the 11th of June 2023, at around 7 p.m., while she was waiting for a bus to go home. You forcefully grabbed her and pulled her to the back of the steps opposite Hanson's supermarket and then forcefully removed her shorts and undergarments. Having done that, you penetrated her vagina with your penis without her consent. While doing that, you forced her to bite your neck indecently.

5. Rape is one of the most humiliating and distressing crimes. It violates the physical self of a person and destroys the personal dignity and self-autonomy of a person. Therefore, Rape is a serious offence.
6. The primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the Community from offenders of this nature.
7. The tariff for the offence of Rape involving an adult victim ranges from seven (07) years to fifteen (15) years of imprisonment period. The tariff for the offence of Sexual Assault is between 2 years and 8 years imprisonment.
8. Both of these offences are founded on the same series of offences. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
9. The Complainant had seen you before, but there is no information before the Court on whether she knew you well. The Prosecution decided not to tender a Victim Impact Report, making it difficult for the Court to properly evaluate the level of harm caused by the incident to the Complainant.
10. You carried out this sexual assault when the Complainant was alone and waiting for the bus at the Bus stop in the late evening. You had employed a substantial amount of force on the Complainant. I therefore, find the level of culpability in this offence is high.
11. Considering the severe nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select ten (10) years as the starting point.
12. The learned Counsel for the Defence submitted your personal and family background in his mitigation submissions, which I do not find to be of any mitigatory value.

13. You are not a first offender. You pleaded guilty to these offences, thus saving the Court time and preventing the Complainant from giving evidence, recalling her traumatic experience that day. Therefore, you are entitled to a discount for your early plea of guilty. I accordingly give you discount of one (01) year.
14. Considering the above reasons, I sentence you to nine (09) years imprisonment as an aggregate sentence for these two counts as charged.
15. Having considered the seriousness of this crime, the purpose of this sentence, your age, and the opportunity for rehabilitation, I find that seven (07) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for seven (07) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### **Head Sentence**


16. Accordingly, I sentence you to nine **(09) years** imprisonment as an aggregate sentence for the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and the offence of Sexual Assault, contrary to Section 210 (1) (b) (i) of the Crimes Act. Moreover, you are not entitled to any parole for a period of **seven (07) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### **Actual Period of the Sentence**

17. You had been in remand custody for this case for nearly ten (10) months before this sentence. Accordingly, I consider ten (10) months as a period of imprisonment you have already served.
18. Accordingly, the actual sentencing period is **eight (08) years and two (02) months** imprisonment with a non-parole period of **six (06) years and two (02) months**. The sentence to be served concurrent to the remainder of your present imprisonment term.

19. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
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**Hon. Mr. Justice R. D. R. T. Rajasinghe**

**At Suva**

30<sup>th</sup> September 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused.