

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

**Criminal Case No.: HAC 64 of 2023**

**STATE**

**V**

**VINIT VISHAL DEO**

**Counsel** : Mr. T. Tuenuku for the State  
: Mr. K. Hassan for the Accused

**Date of Trial** : 16 – 17 January 2025  
**Date of Judgment** : 14 February 2025  
**Date of Sentencing Hearing:** 5 March 2025  
**Date of Sentence** : 7 March 2025

**SENTENCE**

1. Mr. Deo, on 14 February 2025, after trial before this Court, you were convicted of five counts of serious sexual offending against a 15-year-old girl whose family were neighbours of your parents. I shall refer to her in these sentencing remarks as “the complainant”.
2. The factual basis upon which I sentence you today is set out in my Judgment dated 14 February 2025. For present purposes, it is sufficient to set out those facts in brief summary.
3. On 14 September 2023, at around 3.15pm, the complainant left school for home. You picked her up in front of the Nacula Shopping Centre and offered to give her a lift home. Rather than take her directly home, however, and

against her express wishes, you drove her to the road that leads to the cane farm at Benau (count 1 – abduction). You locked the car doors, drew the curtains, and tried to kiss her. The complainant felt scared, and told you that she wanted to go home, but you persisted in kissing her on her lips (count 2 – indecent assault) and caressing her naked breasts (count 3 – sexual assault). You then took down your pants, pulled the complainant's hair, pushed her head down and told her to suck your penis. She resisted, but you pushed her head down and your penis entered her mouth (count 4 – rape). I am sure that you ejaculated in her mouth. You then pulled up your pants. The complainant told you that she wanted to go home, but you instead drove to Naseakula, where you again forced your penis into her mouth (count 5 – rape). When you eventually dropped her near her home, you told her not to tell anyone what you had done to her, and you made threats to harm her father.

4. I must now proceed to impose a just and proportionate sentence for the totality of your offending.

#### **Prosecution sentencing submissions**

5. The prosecution has filed helpful written submissions, and Mr. Tuenuku also addressed the Court at your sentencing hearing. The prosecution has drawn my attention to the relevant guideline judgments, and have also urged upon me three factors which they say makes your offending more serious.
6. Firstly, there was a wide disparity in age between you and the complainant. You were 28 years old at the time of your offending against the complainant.
7. Secondly, you breached neighbourly trust.
8. Thirdly, you made threats against the complainant's father in order to avoid being held to account for your offending.
9. On your behalf, Mr. Hassan has filed thorough written submission, and addressed me at your sentencing hearing. I have considered everything he advances on your behalf.

10. You are now 29 years old and married with two young daughters. You have been the sole breadwinner for your family.
11. You have no previous convictions.
12. I am told that you have suffered socially due to this offending, and were ridiculed by family and friends after being charged. Mr. Hassan submits that the charges have been a punishment as they have brought shame upon you and disrepute within your family and society.
13. Mr. Hassan further submits as follows:

*“The accused being a first offender and is remorseful not because he has committed the offence, but because he has been found guilty by the court and he still maintains that he has not committed the offences for which he has been convicted.”*

14. This is really just a rather laboured way of saying that you are not at all remorseful for your disgraceful behaviour in sexually abusing an innocent child.
15. I must be clear that your lack of remorse does not make your offending more serious, but it does mean that I cannot afford you any credit for expressing genuine remorse.
16. Mr. Hassan concludes by seeking leniency due to your youth and good community service record.

### **Discussion**

17. The maximum sentence for abduction contrary to section 285 Crimes Act is 5 years' imprisonment. The accepted tariff is 12 months' to 3 years' imprisonment.

18. The maximum sentence for indecent assault is 5 years' imprisonment. The accepted tariff is 12 months' to 4 years' imprisonment.
19. The maximum sentence for sexual assault is 10 years' imprisonment. The accepted tariff is 2 years' to 8 years' imprisonment.
20. The maximum sentence for rape is life imprisonment. The Supreme Court has given a guideline judgment that the tariff for rape of a child is 11 years' to 20 years' imprisonment.
21. Whilst sentences imposed by other sentencing courts provide broad guidance, there is a limit to the assistance that any sentencing court may glean from sentences imposed in other cases for similar offending. Every sentencing exercise is heavily fact specific, and must be approached as such.
22. It is also noteworthy that the accepted tariffs for the offences you have committed are wide. My task is to determine a just and proportionate sentence within those tariffs that properly reflects the totality of your offending across all five counts.
23. Turning my attention to the purposes of sentencing as set out in section 4 of the Sentencing and Penalties Act, I have had regard to a combination of the statutory purposes.
24. Sentencing courts often remark that serious sexual offending against children warrants a deterrent sentence. Whilst this is undoubtedly so, it is difficult to measure the effectiveness of particular deterrent sentences. For my part, I am doubtful that those who would contemplate raping children would be deterred from doing so based on a calculation of the potential harsh penalties involved. Certainly, it has not been the experience of the courts that the harsher sentencing regime ushered in by the Supreme Court has brought about a reduction in abhorrent sexual offending against children.
25. Having said that, it seems to me that condign punishment of those who offend against children serves an important function. By denouncing sexual offending against children in the strongest terms, sentencing courts help to

shape societal values. Education through denunciation reinforces law-abiding and decent citizens' rejection of sexual abuse of children.

26. My principal focus in determining a just and proportionate sentence in this case is to ensure that the sentence I impose adequately signifies that the court and the community denounce the commission of sexual offending against children.
27. In my view, it is only right and proper that your offending has brought community opprobrium upon you. Certainly, your feelings of having suffered social stigma do not reduce the seriousness of your offending.
28. I have decided that the best way to achieve a just and proportionate sentence reflecting the totality of your offending against the complainant is to take the offending charged as counts 2, 3 and 4 as the lead offences, to treat the other serious offending reflected in counts 1 and 5 as serious aggravating factors, and to impose concurrent sentences on those counts.
29. I have concluded that in all the circumstances of this case, including the complainant's vulnerability, the manner in which you abused the familial relationship to facilitate your offending, ejaculation, the prolonged nature of your offending, with the corresponding fear the complainant must have endured, and your attempt to evade justice by threatening her father, I consider that the appropriate aggregate sentence on counts 2, 3, and 4 is one of 14 years' imprisonment.
30. Sentencing principles require that I now step back and make an appropriate adjustment to reflect the totality of your offending behaviour across all five counts.
31. In my assessment, balancing aggravating and limited mitigating factors, an overall sentence of 15 years' imprisonment is appropriate.
32. Accordingly, I sentence you as follows:  
  
Count 2, 3, 4 – 15 years' imprisonment.

Count 1 – 12 months' imprisonment concurrent.

Count 5 – 13 years' imprisonment concurrent.

33. I am required to fix a period before which you may not be considered for parole. In practical terms this will be of far more concern to you than the head sentence I impose.
34. The guideline judgment for rape of a child does not assist me in this task. Indeed, I can discern no settled practice in the decided cases. In order to avoid the impression of arbitrariness, therefore, I must adopt a principled approach.
35. Parole and remission are two different and distinct concepts.
36. Remission is dealt with in Sections 27 and 28 of the Corrections Service Act 2006. Section 27(2) provides that:
- “For the purposes of the initial classification a date of release for each prisoner shall be determined which shall be calculated on the basis of a remission of one third of the sentence for any term of imprisonment exceeding one month.”*
37. In *Timo v State* [2019] FJSC 22; CAV0022.2018 (30 August 2019) the Supreme Court observed, at [27]:
- “The Sentencing and Penalties Act 2009 also gives no guidance to a Court as to when and in which category of cases a non-parole period should be fixed or not fixed. Therefore, a question arises: What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for awarding (if at all) a non-parole period to a convict?”*
38. At the time *Timo* was decided, sentencing courts had a wide discretion whether or not to impose a non-parole period. That discretion was removed by legislative amendment of the Sentencing and Penalties Act 2009. Sentencing Courts are now required to fix a non-parole period when imposing

a term of imprisonment of two years or more. It remains the case that the Sentencing and Penalties Act provides no guidance on how non-parole periods are to be calculated.

39. The rhetorical question posed in *Timo* may be appropriately re-framed as: What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for fixing a just and proportionate non-parole period?”
40. This remains an important question because, as the Supreme Court highlighted, at [28]:

*“This question is important because the effect of a Court directing a non-parole period on a convict is that the convict cannot be released prior to completion of the non-parole period. This could impact on the delivery and administration of justice in several ways – not only for the convict through a curtailment of his or her human right of personal liberty, but also for the Executive through a curtailment of its statutory power of granting remission and encroaching on its powers of early release of prisoners under the Corrections Service Act 2006 read with the Corrections Service Regulations 2011. It could also have an impact on society and its safety and well-being.”*

41. The Court described the tension between the authority of sentencing courts to fix a non-parole period, and the exercise of power under the Corrections Service Act, at [37] as follows:

*“In exercising the authority of fixing a non-parole period, the Court is, in a sense, circumscribing the exercise of power by the Parole Board and the Minister under the Corrections Service Act 2006. There may well be an extraordinary case in which the Parole Board and the Minister are of opinion that the convict is deserving of parole, but their hands would be*

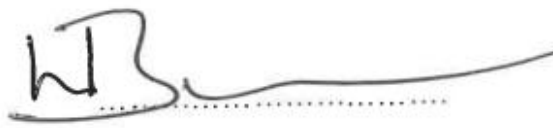
*... tied because of an order of the Court fixing a non-parole period. This could amount to encroaching or subverting the discretionary power given by law to the Parole Board and the Minister, which the Courts would be loathe to do. It is for this reason that the Courts should be cautious and circumspect. This is not to say that the Courts should not fix a non-parole period in any case, but that the Courts may do so in exceptional cases and circumstances and after following a set procedure.”*

42. Adapting the reasoning of the Supreme Court to my duty to fix a non-parole period in this case, it appears to me that a principled approach would be for me to fix a non-parole period that mirrors the provisions of the Corrections Service Act which govern remission.
43. In some cases sentencing courts may consider it appropriate to circumscribe the Commissioner’s authority to grant early release, but it is beyond the scope of these sentencing remarks to consider what circumstances might warrant that approach.
44. You are a first offender, albeit the offences you have committed are very serious. I do not consider it necessary or appropriate to ‘warehouse’ you. In my view, you should be given every opportunity to avail yourself of opportunities for rehabilitation.
45. On this basis, I consider that a non-parole period of 10 years would reflect the appropriate punitive element of your sentence, and also provide a reasonable incentive for rehabilitative efforts on your part.
46. I would encourage you to reflect at length on the inevitable harm that your offending has caused to the complainant, and to engage with any intervention programmes that may be available to you during your period of incarceration.



47. I remanded you in custody on 14 February 2025. I round up the 21 days you have already served to 1 month, which is to be regarded as a period of imprisonment that you have already served.
48. Accordingly, the remaining time you must serve before being eligible to be released on parole is 9 years 11 months.
49. Mr. Deo, for the reasons I have explained, the sentence I impose is 15 years' imprisonment, less the time you have already served on remand. Your non-parole period is 9 years 11 months from today.
50. You may appeal to the Court of Appeal within 30 days.



  
Hon. Mr. Justice Burney

**At Labasa**

7 March 2025

**Solicitors**

**Office of the Director of Public Prosecutions for the State  
Jitend Reddy Lawyers for the Accused**