

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 238 of 2024

STATE

vs.

JIMILAI VOLAU

Counsel:	Ms. S. Bibi with Mr. J. Vaurasi for the State Mr. S. Ravu with Ms. G. Volavola for Accused
Dates of Hearing:	28 th and 29 th January 2025
Date of Closing Submission:	10 th February 2025
Date of Judgment:	07 th March 2025
Date of Sentence:	27 th March 2025

SENTENCE

1. The name of the Complainant is suppressed.
2. Mr. Jimilai Volau, on the 7th of March 2025, this Court found you guilty of one count of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act, which carries a maximum sentence of life imprisonment.
3. It was proved during the hearing that you had penetrated the vulva of the Complainant with your fingers on the 12th of September 2024. The Complainant was five years old when this

offence was committed against her. You were familiar to the Complainant as you were a friend of her family and stayed with them.

4. This case involves the sexual exploitation of a young child by someone familiar within her home environment. Sexual exploitation of children in their domestic settings has become a significant social issue. The troubling phenomenon of abusing children for sexual gratification requires prompt and effective attention. Consequently, I consider the objective seriousness of this crime to be extremely high.
5. The primary purpose of this sentence rests on the principle of deterrence. It is the responsibility of the Court to deter offenders and others from committing offences of the same or similar nature while protecting the community from such individuals. A harsh and lengthy custodial sentence is necessary for these types of offences to illustrate the seriousness of the crime and reflect that a civilized society unequivocally denounces such acts.
6. The maximum penalty for Rape is life imprisonment. Gates CJ in **Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2nd of November 2018))** held that the tariff for the Rape of a child is between 11 and 20 years' imprisonment.
7. The contemporary understanding of Rape law emphasizes the protection of sexual autonomy against the harm caused by non-consensual penetrative sexual acts. The central elements of Rape are not the mechanical description of objects and body parts but the physical invasion of a sexual nature committed against the victim under coercive circumstances. (*vide The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T*).
8. The offence of Rape, as stipulated under Section 207 of the Crimes Act, is not structured within the gendered male-female paradigm. The legislative drafters of the Crimes Act found that any form of penetration of any bodily orifice, as prescribed under Section 207, constitutes a physical invasion of a sexual nature, thus constituting the offence of Rape. Accordingly, Rape is not primarily defined based on the gender of the victim, the place of

penetration, or the method of penetration. Rape is no longer seen as an offence against morality; rather, it is an offence against the right to personal liberty and the right to private and family life (*vide Sections 9 and 24 of the Constitution*).

9. Consequently, the sentence should not depend on the location of the penetration, the nature of the penetration, or the gender of the victim. Instead, it must concentrate on the severity, the harm, and the impact of the physical invasion on bodily integrity. Therefore, the extent of the invasion of the victim's bodily integrity and sexual autonomy is a vital factor in evaluating the severity and effect of the crime on the victim.
10. The Prosecution did not provide a Victim Impact Report, leaving the Court without evidence of how this crime has affected the young Complainant.
11. You committed this crime while the Complainant was playing with her younger sibling, away from the adults. You found an opportunity to assault the Complainant sexually and then executed your disgraceful intention without any regard for the young Complainant so as to satisfy your reprehensible sexual desire. I find the level of culpability is high in this crime.
12. Considering the serious nature of this offence, the purpose of the sentence, and the level of culpability, I select 12 years as the starting point.
13. The Complainant is the daughter of your friend's sister, with whom you had been staying. You abused her trust and confidence as someone known and respected. The age difference between you and the Complainant is significantly large. You exposed this child Complainant to sexual activities by committing this crime at a very young age. I consider these reasons to be aggravating factors in this offence.
14. In his mitigation submissions, the Learned Counsel for the Defence presented your personal and family background, which offers no mitigating value.

15. The Learned Counsel for the Defence submitted that you are a first offender; therefore, you are entitled to a substantial discount. I find that your previous good character, particularly since you have not been tainted by any prior conviction for an offence of a sexual nature, would have allowed you to interact freely with young children without any suspicion of risk. The Complainant's family trusted you, permitting you to be with the young children. Furthermore, there is no indication that you have significantly contributed to the community or have any reputation in the community, as outlined in Section 5 of the Sentencing and Penalties Act. Thus, you are only entitled to a minimal discount for your previous good character.
16. In light of the above reasons, I increased the sentence by two years due to the aggravating factors, resulting in a total of fourteen years. Considering your prior character, I reduced it by one year. Therefore, I have set your final sentence at thirteen years of imprisonment.
17. After considering the seriousness of this crime, the purpose of this sentence, and the opportunities for rehabilitation, I find that a non-parole period of ten years would fulfill the objectives of this sentence. Therefore, you are not eligible for parole for ten years under Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence


18. Consequently, I sentence you to thirteen (13) years of imprisonment for one count of Rape, as charged in the information. Furthermore, you are eligible for parole for ten (10) years, pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

19. You spent nearly six months and sixteen days in remand custody for this case, as the Court did not grant you bail before the sentence. In accordance with Section 24 of the Sentencing and Penalties Act, I consider seven months the period of imprisonment you have already served.

20. Accordingly, the actual sentencing period is **twelve (12) years and five (5) months** of imprisonment, with a non-parole period of **nine (9) years and five (5) months**.
21. 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

27th March 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.