

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 337 of 2023

STATE

v

IOANE TAUKEISALILI

Counsel: Mrs. U. Ratukalou and Ms. K. Dugan for the State
Mr. T. Ravuniwa on instruction of Mr. W. Navuni for the Accused

Date of Mitigation & Sentence hearing : 16 June 2025

Date of Sentencing: 1 July 2025

SENTENCE

1. **Ioane Taukeisalili**, the accused, was tried, found guilty and duly convicted of Count 1: *Sexual assault* and Count 2: *Rape*, laid out as follows in the Information by the Acting Director of Public Prosecutions dated 21 November 2023 and filed on 23 November 2023:

COUNT ONE

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210(1) and 2(a) of the Crimes Act 2009.

Particulars of Offence

IOANE TAUKEISALILI on the 1st of November 2023, at Lami in the Central Division, unlawfully and indecently assaulted **SALOTE NAIULA** by sucking her breasts.

COUNT TWO

Statement of Offence

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

Particulars of Offence

IOANE TAUKEISALILI on the same occasion in Count 1, had carnal knowledge of **SALOTE NAIULA** by penetrating her vagina with his penis, without her consent.

Brief facts of the Sexual assault and Rape

2. **Salote Naiula (PW1)**, the complainant, was born on 13 January 2002 to parents Leone Apisai and Amele Likusolo, has 5 siblings, and 21 years old at the time of the offending on 1 November 2023. PW1 currently reside at Pender Street, Suva, and works at Max Value supermarket situated at Flagstaff, Suva. PW1 attended Nabuabuco District School located at Naelevuki village in Naitasiri, DAV College in Ba, and Fiji National University, Natabua Campus, Lautoka for 2 years. In the period October and November 2023, PW1 worked as a cashier at Max Value supermarket at Lami town, stayed at a girls hostel in Delainavesi since April 2023, and courted Jone Boqawai (PW2). PW1 commenced work at Max Value supermarket in Lami town on Wednesday 26 April 2023 when she first met the accused **Ioane Taukeisalili** who was lead security at the same supermarket. While at work one day, Ioane Taukeisalili met PW1 and

offered her to stay at his place with him and his wife Lelea, to which PW1 agreed and moved into Ioane Taukeisalili's home on 5 October 2023 situated at Kalekana settlement, Kalekana, Lami. PW1 had agreed to relocate to Ioane Taukeisalili's home mainly because her relationship with the other female occupants of the hostel at Delainavesi was not amiable, the taxi fare from work, especially when she knocks off late, to the Delainavesi girls hostel was expensive, and also an opportunity for her to save some money being a private student at the Fiji National University including alleviating her budget constraints. On 1 November 2023, the accused Ioane Taukeisalili and PW1 were home alone since the accused's wife Lelea was in Labasa for work purpose. After hanging her laundry to dry on that particular morning of 1 November 2023 between 8.00 am and 9.00 am, PW1 lied down and felt excruciating pain on her back, and she then asked Ioane Taukeisalili to massage her back because she heard from other work colleague that he is a good masseuse. Ioane Taukeisalili then told PW1 to take off her t-shirt and just wrap herself with a *suluvakatoga*, which she did, but wore a bra and underwear with the *suluvakatoga*, while the accused wore only a pair of trousers and nothing on top. PW1 then lied down on the mattress facing upwards at about 9.30 am to 10.00 am, and Ioane Taukeisalili knelt on her right side and began massaging her legs and towards her stomach with oil using both hands. After massaging PW1 for 30 seconds, Ioane Taukeisalili told PW1 to turn and lie on her stomach facing downwards so that he can massage her back, which she did. Ioane Taukeisalili then pulled up PW1's *suluvakatoga* and started massaging her thighs up to her shoulders while kneeling in between PW1's legs. Ioane Taukeisalili then told PW1 to turn facing upwards, turned on the music box, and massaged PW1's thighs again right up to her breast, which caused PW1 to react by asking Ioane Taukeisalili, "*Ioane what are you doing? You are not suppose to do this*", to which he replied, "*It's ok, it's just us in the house*", and PW1 felt more anxious and scared at that moment. Ioane Taukeisalili used both hands to massage PW1's breasts, then massaged PW1's shoulders and hands, and then tried to kiss PW1, which made PW1 want to scream but couldn't because he was trying to kiss her on the mouth to distract her from screaming, and simultaneously locked PW1's thighs with his legs while laying on top of her. PW1 tried to push Ioane Taukeisalili but couldn't, as she felt weak due to his weight lying on top of her and also having stomachache. Ioane Taukeisalili held onto PW1's hand with his hand, while using his other hand to forcefully pull down PW1's panty/underwear halfway down to PW1's knee, then he pulled down his trousers and completely pulled off PW1's panty/underwear, knelt in between

PW1's legs, lay on top of her, and inserted his penis into PW1's vagina, which was painful to PW1 and she passed out for about 10 seconds. Ioane Taukeisalili pushed his penis into PW1's vagina for about three times, and PW1 kept asking him, "*What are you doing?*", because she never imagined that he would do that to her, and she did not allow Ioane Taukeisalili to insert his penis into her vagina. Prior to Ioane Taukeisalili inserting his penis into PW1's vagina, he sucked both of PW1's breasts using his mouth, which conduct PW1 also did not permit Ioane Taukeisalili to do to her. When she was momentarily passed out, PW1 could hear Ioane Taukeisalili calling her name, and upon regaining consciousness, Ioane Taukeisalili told her neither to tell his wife nor her boyfriend, to which PW1 simply nodded. When she opened her eyes, PW1 noticed that she was lying naked on the mattress, while Ioane Taukeisalili stood in front of her wearing his trousers, and seeing her in tears, went to fetch a cloth to wipe her tears. PW1 cried because of being raped and indecently assaulted by Ioane Taukeisalili. Ioane Taukeisalili then apologized to PW1 for what he had done to her, brought the *sulu vakatoga* and covered PW1 with it, and went to have his shower, while PW1 remained lying there and feeling weak. After Ioane Taukeisalili had his shower, he then asked PW1 if she is going to work, to which PW1 replied by shaking her head to indicate no. Ioane Taukeisalili then left home and after 5 minutes, PW1 felt lighter and then messaged her boyfriend Jone Boqawai (PW2) via Facebook Messenger to pick and take her to the hospital, to which PW2 replied that he will pick her and for her to wait for him at the bus stop. PW1 then took a shower, got dressed, and walked down to the bus stop at around 10.00 am to wait for PW2 who then picked her and took her to the Lami Health Center. On the way to the Lami Health Center, PW1 sobbed and told PW2 that Ioane Taukeisalili harassed and raped her that morning. At the Lami Health Center, PW1 did not tell the doctor that she was raped, but only having abdominal and stomach pain for which the doctor examined her accordingly. PW1 and PW2 lodged the rape complaint at the Lami Police Station on the following day i.e. 2 November 2023. Ioane Taukeisalili was subsequently arrested by the police, interviewed under caution and charged with *Sexual assault* and *Rape*, tried, found guilty and duly convicted on 27 May 2025 of the aforesaid offences as per the indictment.

Count 2: Rape sentence analysis

3. The maximum penalty for ***Rape*** contrary to section 207(1) & (2)(a) of the Crimes Act 2009 is

life imprisonment.

4. The sentencing tariff for rape of an adult is 7 to 15 years imprisonment according to Rokolaba v State [2018] FJSC 12; CAV0011.2017 (26 April 2018) and at paragraphs 39 – 40, the Supreme Court held:

[39] Though starting points in Fiji for calculating sentence used to be, for adult victims, as low as 7 years – Mohammed Kasim v. The State [2018] FJCA 25; AAU0021j.93S (27 May 1994) (27 May 1994), the court said:

“We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than the starting point.”

*[40] Kasim was decided in 1994. Tariffs for sexual offences and specially rape have moved upwards as befits such a serious offence under the Crimes Act, and which in turn reflects the community’s increasing yet justified sense of outrage and horror for the crime. **Presently the tariff for rape of an adult has been set between 7 and 15 years imprisonment** - State v. Marawa [2004] FJHC 338. In really bad cases the tariff may have to be exceeded.*

5. The aforesaid tariff for rape of an adult remains applicable hitherto, despite the repeal of the Penal Code (Cap.17) and subsequent enactment of the Crimes Act 2009, substantiated by Navuda v State [2023] FJSC 45; CAV0013.2022 (26 October 2023) whereby the Supreme Court held at paragraph 34:

*34, The tariff. Akuila’s only ground of appeal in the Supreme Court against sentence relates to the tariff for rape which the judge took. It was not a ground which Akuila had argued in the Court of Appeal. **That tariff was 7-15 years imprisonment**. Akuila claims that this tariff represents the tariff for rape since the repeal of the Penal Code and the enactment of the Crimes Act 2009, whereas the tariff which the judge should have taken was the tariff which prevailed while the Penal Code was in force. Even if that argument is correct, it does not help Akuila. **The tariff for rape while the Penal Code was in force as well as since then has been 7-15 years imprisonment**. Indeed, the four cases which the judge referred to in his sentencing remarks which he regarded as authorities for the tariff for rape being 7-15 years imprisonment were all decided before the repeal of the Penal Code.*

6. Furthermore, in Chandra v State [2024] FJSC 21; CAV0029.2022 (27 June 2024), the Supreme Court in granting leave and ultimately quashing the adult rape sentence of 13 years imprisonment with a non-parole period of 10 years imprisonment, *in lieu* of a custodial term of 11 years with a non-parole period of 10 years imprisonment, applied the tariff of 7-15 years imprisonment, and held at paragraphs 6, 7 & 32:

The sentencing decision

6. *In determining a sentence of imprisonment of thirteen years with a non-parole period of ten years as appropriate in the circumstances, the judge referred to the serious nature of the crime of rape and to the maximum punishment of life imprisonment. He then proceeded to compute the sentence by initially referring to the tariff for rape of an adult being a term of imprisonment ranging from 7 years to 15 years (as per Mohammed Kasim v The State (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993 of 27 May 1994).*

7. *Within that range the judge selected an appropriate starting point to reflect the circumstances and gravity of the petitioner's offending by reference to the following guidance in Koroivuki v The State [2013] FJCA 15; AAU0018.2010 (5 March 2013):*

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

32. *Ensuring even-handedness in the dispensation of justice is of the utmost importance and can be notoriously difficult to achieve in the area of criminal justice sentencing. The development of tariffs identifying ranges of sentences for categories of broadly similar offending has done much to assist the courts in achieving even-handedness. Where a marked non-conformity with an identified range of sentencing levels occurs, this has the potential to distort what has come to be regarded as certain in the law and may also result in a substantial and grave injustice.*

7. The complainant Salote Naiula (PW1) was 21 years old [D.O.B – 13/01/2022] when she was raped by Ioane Taukeisalili.
8. Given the sentencing tariff of 7 to 15 years imprisonment for adult rape, for this instant, I

choose a **starting point** of 9 years imprisonment.

9. The starting point of 9 years is enhanced by 3 years due to the following **aggravating factors**:

- a) The accused had deliberately and opportunistically raped the complainant in his house at Kalekana settlement knowing full well that: (i) the complainant was very vulnerable due to her experiencing back pain and had basically asked him to massage her to relieve her back pain since he is a good masseuse; (ii) he was the one who had brought the complainant to stay with him and his wife in their home; (iii) he was home alone with the complainant as his wife had gone to Labasa for work purpose; (iv) the complainant did not consent for him to insert his penis into her vagina, but only to massage her to relieve her back pain.
- b) The accused raping the complainant in his house, is demonstrably a breach of trust, and an atrocious and despicable conduct on the part of the accused, who instead must protect all females including the complainant, his wife and other vulnerable person(s) living in that house from being sexually abused or otherwise.
- c) The complainant was raped by the accused inside the very house where she should find solace and security; but instead suffered emotional and psychological trauma due to the rape as succinctly highlighted in the *Victim Impact Statement* report dated 28/03/2025:

I started to develop fear, especially when I am walking in town and overthink about his relatives who had been messaging me to threaten me that they would hurt me for reporting Ioane.

After what Ioane did to me, I asked our HR to transfer me to Max Value Flagstaff because I felt uncomfortable about working at Lami Max value as Ioane is also a staff there, and usually comes to buy at the supermarket.

When I transferred to Flagstaff, I started going to Albert park after work to relieve the stress from the day and get my mind off what Ioane did to me.

In terms of my relations with my family, they were very supportive towards my healing journey and they would [call] and check on how I was doing. Also, my work colleagues were also very supportive.

After what happened, I did not go to work from Feb to mid-June as there was a lot going on with me in regards to what Ioane did to me, things I go through at home and at work.

The Supreme Court in Aitcheson v State (supra) at paragraph 72 held, '[72]

[u]ndoubtedly it has been accepted by the society that rape is the most serious offence that could be committed on a woman. Further it is said that; “A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female.”

- d) Adult rape in Fiji is becoming prevalent and a scourge and menace in our society, thus compelling the need for deterrence weighed together with *inter alia* the sentencing objectives of punishment, retribution and rehabilitation.

10. The 12 years is reduced by 1 year for the following **mitigating factors**, that is, the accused is 37 years old, married with no children, previously worked as security guard at Max value supermarket in Lami town, and has no prior conviction, thus arriving at the interim custodial term of 11 years.

Time spent in custody

11. The 11 years is further reduced by 12 months for time spent in custody, thus arriving at the head sentence of 10 years imprisonment.
12. Therefore, the head sentence for Count 2: Rape, in this instant, is a custodial term of 10 years.

Count 1: Sexual assault sentence analysis

13. The maximum sentence for *Sexual assault* contrary to section 210(1)(a) of the Crimes Act 2009 is 10 years imprisonment.
14. The sentencing tariff for *Sexual assault* is 2 to 8 years imprisonment according to State v Vuli [2019] FJHC 1091; HAC205.2017 (12 November 2019) and at paragraphs 30 – 32, Justice Riyaz Hamza held:

[30] The offence of Sexual Assault in terms of section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[31] In the cases of State v Abdul Khaiyum [2012] FJHC 1274; Criminal Case HAC 160 of 2010 (10 August 2012) and State v Epeli Ratabacaca Laca [2012]

FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of section 210(1) of the Crimes Act.

[32] It was held in State v Laca (supra), “The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom range is for less serious assaults such as brushing of covered breasts or buttocks.”

“A very helpful guide to sentencing for sexual assault can be found in the United Kingdom’s Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim’s body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between part of the offender’s body (other than the genitalia) with part of the victim’s body (other than the genitalia).”

15. The Sexual assault in Count 1 falls within *Category 3* noted above justified by the fact that Ioane Taukeisalili sucked the complainant’s breasts, and I select a **starting point** of 2 years, enhance it by 3 years for the **aggravating factors**, reduce the 5 years by 1 year for the **mitigating factors**, and further reduce the 4 years by 12 months for **time spent in custody**, thus arriving at the head sentence of 3 years imprisonment for Count 1: *Sexual assault*.

Totality principle of sentencing

16. Based on the *Totality principle* of sentencing, the custodial terms of 10 years for Count 2: *Rape* and 3 years for Count 1: *Sexual assault*, are hereby made **concurrent** to the effect that Ioane Taukeisalili is sentenced to a concurrent custodial term of 10 years.

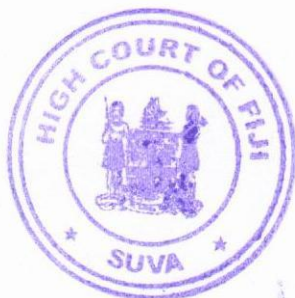
Non-parole period

17. Pursuant to section 18 of the Sentencing and Penalties Act 2009 and Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019), I have decided to fix a non-parole period of 9 years imprisonment for the concurrent custodial term of 10 years.

CONCLUSION

18. **Iowane Taukeisalili** stands convicted of Count 1: Sexual assault and Count 2: Rape in the indictment, and hereby sentenced to a concurrent custodial term of **10 years, with the non-parole period of 9 years imprisonment.**

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



Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

1 July 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused