

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 163 of 2023

STATE

V

ISEI NAMACAMACA

Counsel : Mr. Laisiasa Baleilevuka for the State
Ms. Losana Taukei with Ms. Varsha Rao for the Accused

Dates of Trial : 29-30 January 2025

Judgment : 25 June 2025

Sentence Hearing : 5 August 2025

Sentence : 15 September 2025

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "URT".

SENTENCE

[1] Isei Namacamaca, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

Count 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of January 2021 and 31st day of December 2021, at Lautoka, in the Western Division, penetrated the mouth of **URT**, a child under the age of 13 years old, with his penis.

Count 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of May 2023 and the 31st day of May 2023, at Lautoka, in the Western Division, unlawfully and indecently assaulted **URT** by massaging his buttocks.

Count 3

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of May 2023 and the 31st day of May 2023, at Lautoka, in the Western Division, penetrated the anus of **URT**, a child under the age of 13 years, with his penis.

Count 4

Statement of Offence

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

Particulars of Offence

ISEI NAMACAMACA, between the 1st day of January 2023 and 31st day of December 2023, at Lautoka, in the Western Division, unlawfully and indecently assaulted **URT** by pulling down his pants and masturbating his penis.

- [2] You pleaded not guilty to the two counts of Rape (Counts 1 and 3), but pleaded guilty to the two counts of Indecent Assault and Sexual Assault (Counts 2 and 4 respectively). Since you pleaded not guilty to the two counts of Rape the matter proceeded to trial. The ensuing trial was held over 2 days. The complainant (**URT**), his adoptive mother, Koini Tinai Rayawa, who was the recent complaint witness, Acting Sergeant 4202 Timoci Tavurunaqiwa and Doctor Salome Daunivalu, testified on behalf of the prosecution. You testified on your own behalf. You did not call any other witnesses in support of your case.

- [3] At the end of the prosecution case, this Court decided that there was no relevant or admissible evidence to establish that you had committed the offence you are charged with in Count 2. This is in spite of the fact that you had pleaded guilty in respect of this count. Accordingly, you were found not guilty and acquitted of the said charge. However, this Court decided to call for the defence in respect of Counts 1, 3 and 4.
- [4] At the conclusion of the evidence and having reviewed the totality of the evidence, this Court found you guilty and convicted you of the two charges of Rape (Counts 1 and 3) and the charge of Sexual Assault (Count 4) with which you were charged.
- [5] The complainant clearly testified to the manner in which you had perpetrated these offences on him. I have referred to the complainant's evidence at length in my judgment.
- [6] Therefore, it was proved during the trial that between the 1 January 2021 and the 31 December 2021, at Lautoka, you penetrated the mouth of the complainant URT, with your penis, and at the time the complainant URT was a child under the age of 13 years.
- [7] It was also proved during the trial that between the 1 May 2023 and the 31 May 2023, at Lautoka, you penetrated the anus of the complainant URT, with your penis, and at the time the complainant URT was a child under the age of 13 years.
- [8] It was further proved during the trial that between the 1 January 2023 and the 31 December 2023, at Lautoka, you unlawfully and indecently assaulted the complainant URT by pulling down his pants and masturbating his penis.
- [9] It is an admitted fact that you are the complainant's grandfather's brother-in-law and that both you and the complainant were staying together at the complainant's grandfather's house at the material time.
- [10] It is also admitted that the complainant's date of birth is 21 July 2010. Therefore, the complainant in this case was 10 years at the time of the alleged incident of Rape detailed in Count 1 and 12 years at the time of the alleged incident of Rape detailed in Count 3. At the time he testified in Court he had turned 14.
- [11] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[12] Isei Namacamaca, I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.:

[13] Section 4(2) of the Sentencing and Penalties Act provides that a Court must also consider the following factors when sentencing an offender:

(2) In sentencing offenders a court must have regard to —

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

(c) the nature and gravity of the particular offence;

(d) the offender's culpability and degree of responsibility for the offence;

(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;

(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

(i) the offender's previous character;

(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.

[14] Furthermore, Section 4 (3) of the Sentencing and Penalties Act stipulates the factors that a Court must have regard to in sentencing offenders for a domestic violence offence.

“(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender’s —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.”

[15] Isei Namacamaca, I have duly considered the above factors as well in determining the sentence to be imposed on you.

[16] The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 (“Crimes Act”) carries a maximum penalty of imprisonment for life.

[17] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

[18] In **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S; Pain J said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

[19] In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

*“A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public’s disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: **Roberts and Roberts** (1982) 4 Cr. App R(S) 8; **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S.”*

[20] His Lordship Justice Daniel Goundar, in the case of **State v. AV** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

“...Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children.

Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences”.

[21] In the case of **State v. Tauvoli** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

[22] In the case of **Felix Ram v. The State** [2015] FJSC 26; CAV 12 of 2015 (23 October 2015); His Lordship Chief Justice Anthony Gates laid down the following factors that a Court should take into account when sentencing an offender who has been convicted of Rape:

“(a) whether the crime had been planned, or whether it was incidental or opportunistic;

(b) whether there had been a breach of trust;

(c) whether committed alone;

(d) whether alcohol or drugs had been used to condition the victim;

(e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;

(f) whether the impact on the victim had been severe, traumatic, or continuing;

(g) whether actual violence had been inflicted;

(h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;

(i) whether the method of penetration was dangerous or especially abhorrent;

(j) whether there had been a forced entry to a residence where the victim was present;

(k) whether the incident was sustained over a long period such as several hours;

(l) whether the incident had been especially degrading or humiliating;

(m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;

(n) Time spent in custody on remand;

(o) Extent of remorse and an evaluation of its genuineness;

(p) If other counts or if serving another sentence, totality of appropriate sentence.”

[23] His Lordship Justice Goundar in ***State v Apisai Takalaibau*** – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that “A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community.”

[24] This has been affirmed by the Supreme Court in ***Alfaaz v. State*** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held:

“According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders.”

[25] In the case of ***Anand Abhay Raj v. The State*** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[26] However, in the case of ***Aitcheson v State*** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates (with Justice Saleem Marsoof and Madam Justice Chandra Ekanayake agreeing) stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*“The tariff previously set in ***Raj v The State*** [2014] FJSC 12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances,*

considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.”

[27] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“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.”

[28] Isei Namacamaca, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, I commence your sentence at 11 years imprisonment for each count of Rape.

[29] The aggravating factors are as follows:

- (i) There is a domestic relationship between you and the complainant. You are the complainant’s grandfather’s brother-in-law. You are married to the complainant’s grandfather’s sister. Thus the complainant trusted you. Being so, you should have protected the complainant. Instead you have breached the trust expected from you and the breach was gross.
- (ii) There was a large disparity in age between you and the complainant. The complainant was only 10 years of age, at the time you first committed these offences on him. At the time of the said offending you were 40 years of age. Therefore, you were 30 years older than the complainant at the time.
- (iii) You took advantage of the complainant’s vulnerability, helplessness and naivety.
- (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the complainant of his innocence.
- (v) The offences were committed in a place the complainant considered as his home and where the complainant had a reasonable expectation of safety and security.
- (vi) The frequent prevalence of the offence of Rape in our society today, especially cases of child Rape.

(vii) You are now convicted of multiple offending.

[30] Considering the aforementioned aggravating factors, I increase your sentences by a further 6 years. Now your sentence is 17 years imprisonment for each count of Rape.

[31] Isei Namacamaca, you are now 45 years of age (Your date of birth being 14 March 1980). You are said to be married and have no children from the marriage. It is submitted that you were employed as a labourer at Tangi Cement Factory earning \$200.00 per week, with which you supported yourself and your wife. You were also said to be supporting two of your elderly aunts who live in Nadrau, Nadarivatu, Ba.

[32] It is submitted that you are a first offender. The State too confirms that you have been a person of previous good character. It is further submitted that you have fully co-operated with the Police during the investigations into this matter. It is said that you deeply regret your actions and that you are genuinely remorseful of your conduct. It is stated that as a show of remorse, you had pleaded guilty to the two counts of Indecent Assault and Sexual Assault at a very early stage of these proceedings. Even at the commencement of the trial, you had maintained that you were guilty of the said two counts of Indecent Assault and Sexual Assault.

[33] The fact that you are a first offender with previous good character, the fact that you had fully co-operated with the Police during the investigations and for your show of remorse, which I accept as genuine, I grant you a discount of 3 years. I find no other mitigating circumstances in this case to grant you any further discounts in respect to the charges of Rape. As such, your sentence will now be 14 years imprisonment for each count of Rape.

[34] I will now deal with the offence of Sexual Assault (Count 4), which you have been found guilty and convicted. The offence of Sexual Assault in terms of Section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[35] 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.

[36] 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 of the 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).”

[37] In this case, as per Count 4, it has been proved that you unlawfully and indecently assaulted the complainant by pulling down his pants and masturbating his penis. Therefore, in my opinion, the offence in Count 4 should be categorized under Category 2 (ii) above.

[38] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating factors, including the fact that you have pleaded guilty to the offence, I impose on you a sentence of 5 years’ imprisonment for the fourth count of Sexual Assault.

[39] In the circumstances, your sentences are as follows:

Count 1- Rape contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act – 14 years’ imprisonment.

Count 3 - Rape contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act – 14 years’ imprisonment.

Count 4 - Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 5 years’ imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 14 years.

[40] Accordingly, I sentence you to a term of 14 years imprisonment. Pursuant to the provisions of Section 18 (1) of the Sentencing and Penalties Act, I fix your non-parole period as 11 years' imprisonment.

[41] Section 24 of the Sentencing and Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[42] You were arrested for this case on 28 September 2023 and produced in the Magistrate's Court of Lautoka on 2 October 2023. You were granted bail by the High Court on 7 December 2023. That is a period of over 2 months in custody. Thereafter, you were remanded into custody on 25 June 2025, the day on which you were found guilty and convicted by this Court. You have been in remand custody since that day. That is a further period of over 2 months. The total period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 5 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[43] In the result, your final sentence is as follows:

Head Sentence	-	14 years imprisonment.
Non-parole period	-	11 years imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	13 years and 7 months imprisonment.
Non-parole period	-	10 years and 7 months imprisonment.

[44] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 15th Day of September 2025

Solicitors for the State:
Solicitors for the Accused:

Office of the Director of Public Prosecutions, Lautoka.
Office of the Legal Aid Commission, Lautoka.