

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 35 of 2024

STATE

V

SUBASH CHAND

Counsel : Ms. E. Thaggard for the State
: Mr. A. Kohli for the Accused

Date of Trial : 9, 10, 12 June 2025

Date of Judgment : 8 August 2025

Date of Sentencing Hearing: 15 August and 3 October 2025

Date of Sentence : 9 October 2025

SENTENCE

1. **Mr. Subash Chand**, on 8 August 2025, after trial before this Court, you were convicted of two counts of sexual offending against your 23-year-old first cousin.
2. The factual basis upon which I sentence you today may be shortly stated.
3. The complainant was at home alone in Seaqaqa in July 2023 when, at around 5pm, you came to her home. You were planning to visit your sick grandfather at Solove, together with your family. You said that you were hungry and asked her to prepare food. You came into the kitchen and suggested going to the bedroom. You held her left wrist tightly and took her to the bedroom. She tried to free herself, but couldn't. From behind, you started caressing her breasts over her clothes. She tried to remove your hands, but couldn't

because you were holding her tightly from the back. She told you not to do it as she was not comfortable with you, but you didn't listen and started rubbing her vulva over her clothes, (count 1: Indecent Assault, contrary to section 212(1) Crimes Act 2009).

4. In September 2023, the whole family planned to attend prayers for your sick father at the church near to the complainant's house. You dropped your family at the church and then, at around 8pm, you went to the complainant's home alone. She was home alone as her husband was at work. Whilst she was cooking, you called out to her that you wanted to change your clothes. She went to her bedroom to look for a vest. As she was bending down looking for a vest, you came behind her and started caressing her breasts. She told you not to do that, but you kept on doing it, and also rubbed her private parts. She tried to free herself, but you held her tightly. You laid her on the mattress. She told you to stop as you were her brother. After laying her down, you told her to "drink" your penis. She said that she would not. You straddled her thighs and tried to pull her clothes and put your penis inside. She held her clothes tightly, but you pulled her panty to the side and penetrated her vagina with your penis. She tried to free herself, but was unable to. After two to three minutes, you dressed and warned her not to tell anyone. You then returned to your family at the church, (count 2: Rape, contrary to section 207(1) (2) (b) Crimes Act 2009).

Sentencing submissions

5. The parties have made helpful written and oral submissions for which the Court is grateful.
6. Ms. Thaggard has drawn my attention to the accepted tariff for adult rape of 7 to 15 years' imprisonment. She has also urged upon me a number of factors which the prosecution says makes your offending more serious.
7. Firstly, you breached a relationship of trust when you raped your cousin.

8. Secondly, your offending involved a degree of planning, as you targeted the complainant when you knew that she was home alone.
9. Thirdly, the complainant was 4 months pregnant when you raped her.
10. Fourthly, the prosecution has filed a Victim Impact Statement, completed by the complainant's counsellor, setting out the serious and enduring impact of your offending on the complainant.

Mitigation submissions

11. On your behalf, Mr. Kohli has filed admirably succinct written submissions, and also submitted a number of character references which speak well of your character and moral integrity. He also addressed the Court at your sentencing hearing.
12. I have considered everything he advances on your behalf.
13. You are now 46 years old. You have two children who are still in full-time education. You are a welder employed by Fiji Sugar Corporation.
14. You have no previous convictions and Mr. Kohli informs the Court that you are well-regarded in the community.
15. Mr. Kohli has also made the somewhat eccentric submission that:

“He realises what he has done is wrong. It is abhorrent. It is disgusting. He realises that it is morally wrong by any measure of standards. However, he denies that he did anything legally wrong.”

16. The context for this unusual line in mitigation is that you testified at your trial that you had been in a consensual intimate relationship with the complainant since 2019, a position you evidently still hold to.

17. Mr. Kohli also advanced on your behalf that the complainant is an adult, and does not appear to have been traumatised. Indeed, you requested an opportunity to cross-examine the complainant and her counsellor on the content of the Victim Impact Statement. I did not consider it to be in the interests of justice or appropriate to compel the complainant to return to the witness box to be further cross-examined. I did, however, accede to your request to cross-examine the counsellor/advocate, Ms. Ronika Anjani Deo.
18. Mr. Kohli highlighted the boilerplate nature of Ms. Deo's narrative in this case by reference to a Victim Impact Report prepared by Ms. Deo in an earlier case handled by him. Ms. Deo fairly acknowledged the similarities between the two narratives, whilst also maintaining that her narrative in this case accurately reflects what she was told by the survivor in this case.

Discussion and disposal

19. The maximum sentence for indecent assault is 5 years' imprisonment, and the established sentencing range is 12 months to 4 years' imprisonment. The maximum sentence for rape is life imprisonment. The established tariff for adult rape is 7 to 15 years' imprisonment. Clearly, rape is considered to be a very serious offence.
20. Mr. Kohli has not cited any relevant guideline judgment, but has brought to my attention a couple of sentencing decisions (one of them a very recent decision of this Court). It is well-established that, whilst sentences imposed by other sentencing courts may 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.
21. It is also noteworthy that the accepted tariff for the offences you have committed is wide. My task is to determine a just and proportionate sentence having appropriate regard to the accepted range that properly reflects all the circumstances of your offending behaviour.

22. The Court has not been assisted in this task by Mr. Kohli's wholly unrealistic suggestion that a non-custodial sentence should be imposed. When he was pressed on this at the sentencing hearing, Mr. Kohli sought to defend his position by reference to what was apparently said to him by a judge in a past sentencing hearing. Be that as it may, Mr. Kohli quite properly acknowledged the imperative that mitigation is pitched at a realistic level.
23. Turning my attention to the purposes of sentencing as set out in section 4 of the Sentencing and Penalties Act ("the Act"), I have had regard to a combination of the statutory purposes. Because this is a case involving domestic violence, I have had specific regard to the factors set out in section 4(3) of the Act.
24. Section 4(3)(e) of the Act requires that I have regard to the conduct of the offender towards the victim and any matter which indicates whether he accepts responsibility for the offending behaviour. Since you maintain your innocence, as you are fully entitled to do, it is clear that you continue to refuse to accept responsibility for your offending. Certainly, nothing was advanced on your behalf that suggested you have any remorse or genuine insight into your offending behaviour. After all, it was your defence at trial that your cousin had fabricated wicked lies against you against the backdrop of your long-term extra-marital affair with her.
25. A lack of remorse is not, of course, an aggravating factor. It does, however, feed into my assessment of your prospects of rehabilitation.
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 in a family setting. This type of offending is all too prevalent in our society.
27. I have decided that the best way to achieve a just and proportionate sentence reflecting the totality of your offending against your cousin is to take the offending charged as count 2 as the lead offence, to treat the other offending

reflected in count 1 as a serious aggravating factor, and to impose a concurrent sentence on that count.

28. I take 7 years' imprisonment as the starting point for your sentence on count 1. Balancing the aggravating and mitigating factors, I make an upward adjustment to 9 years' imprisonment.
29. Notwithstanding my reservations about your prospects for rehabilitation, I fix your non-parole period at 6 years.
30. You were remanded in custody on 8 August 2025, which means that you have already served 2 months of your sentence.
31. Accordingly, I sentence you as follows:

Count 2 – 8 years' 10 months' imprisonment.
Count 1 – 2 years' imprisonment concurrent.
32. Mr. Chand, for the reasons I have explained, the sentence I impose is 9 years' imprisonment, less the time you have already served on remand. Your non-parole period is 5 years 10 months from today.
33. You may appeal to the Court of Appeal within 30 days.



A handwritten signature in black ink, consisting of a stylized initial "W" followed by a long, horizontal, wavy line.

Hon. Mr. Justice Burney

At Labasa

9 October 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Kohli & Singh for the Accused**