

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

**CRIMINAL CASE NO. HAC 123 OF 2025**

**STATE**

**V**

**S. T.** [A Juvenile]

**Counsel** : Mr. L. Baleilevuka for the State.  
: Mr. L. Volau for the Juvenile.  
Ms. V. Uqeuqe for and on behalf of the Social  
Welfare Department.

**Date of Hearing** : 25 February, 2026  
**Date of Punishment** : 13 March, 2026

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**PUNISHMENT**

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*(The names of the victim and the juvenile are suppressed they will be referred to as "W.V." and "S.T respectively)*

1. The juvenile is charged by virtue of the following amended information filed by the Director of Public Prosecutions dated 17<sup>th</sup> December, 2025:

**COUNT ONE**

***Statement of Offence***

**RAPE:** contrary to section 207(1), (2) (a) and (3) of the Crimes Act 2009.

***Particulars of Offence***

S.T on the 20<sup>th</sup> day of August, 2025 at Nadi in the Western Division, had carnal knowledge of W.V, a child under the age of 13 years.

**COUNT TWO**

***Statement of Offence***

**BREACH OF ORDER SUSPENDING SENTENCE:** contrary to section 28(1), (2), (4) and (5) (a) & (b) of the Sentencing and Penalties Act 2009.

***Particulars of Offence***

S.T on the 20<sup>th</sup> day of August, 2025 at Nadi in the Western Division, during the operation period of a suspended sentence of imprisonment, committed another offence punishable by imprisonment.

2. On 19 December 2025, the juvenile pleaded guilty to the above two counts in the presence of his counsel. Thereafter on 23 January 2026, the juvenile understood and admitted the summary of facts, which was read and explained in the ITaukei language.
3. The brief summary of facts is as follows:
  - a) On 20 August 2025, between 3pm to 4pm, the victim and his sister were at their home. The victim asked his sister for some loose coins to go to the shop. The victim received 50 cents and he was told by his sister to wait while she changed out of her school uniform. However, after she changed her clothes, she found that the victim had already left.

- b) On his way back from the shop, the victim met the juvenile, who told victim to take some pawpaw to his house. The victim and the juvenile had never met before.
- c) After entering the juvenile's house, the juvenile pushed the victim to the floor, then pulled down the victim's pants before removing his own pants and inserting his penis into the victim's anus for about three minutes.
- d) When the juvenile inserted his penis into victim's anus, the victim told him "*don't*". Despite being told, the juvenile did not stop. Thereafter, the juvenile gave the victim 60 cents and told him not to tell anyone, warning that the victim would get into trouble if he did.
- e) After the ordeal, the victim walked home crying. The victim informed his sister that someone had put his penis inside his anus, had given him some coins, and had threatened with trouble if he disclosed the incident. The matter was reported to the police.
- f) The victim was medically examined the same day. The examining doctor noted the following at the anal orifice:
  - a) Tender on palpation;
  - b) No bruises, cuts, or redness.
  - c) In the professional opinion of the examining doctor the injuries sustained by the victim were a few hours old.
- g) The juvenile was arrested, and caution interviewed, during which he admitted committing the offence.

- h) Furthermore, on 28 May 2025, the juvenile had been punished for the offence of rape by the Suva High Court. In that matter, he was imposed a custodial term of 10 months and 20 days, wholly suspended for three years effective from 28 May 2025.
  - i) While that suspended punishment was still operational, the juvenile committed the present offence. The offence before this court was committed on 20 August 2025, i.e. 2 months and 23 days after being punished by the Suva High Court.
- 4. After considering the summary of facts read by the state counsel, which was admitted by the juvenile, and upon reading his caution interview, this court is satisfied that the juvenile entered an unequivocal plea of guilty on his freewill.
- 5. This court is also satisfied that the juvenile fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences of rape and breach of order suspending sentence, as charged. In view of the above, the court finds the juvenile guilty as charged.
- 6. The state counsel filed punishment submissions, and the defence counsel filed mitigation submissions, for which the court expresses its appreciation.
- 7. The learned counsel for the juvenile presented the following mitigation:
  - a) The juvenile was 14 years at the time of the offending;
  - b) Resides with his adoptive parents;
  - c) Was a Student pursuing a course in Agriculture;
  - d) Pleaded guilty at the first available opportunity;

- e) Cooperated with the police;
- f) Young offender;
- g) Is genuinely remorseful;
- h) Seeks forgiveness of the court;
- i) Promises not to re-offend;
- j) Regrets what he has done.

### **TARIFF**

8. The maximum penalty for the offence of rape is life imprisonment. According to the case of *Aitcheson vs The State [2018] FJSC 29, CAV 0012 of 2018 (2 November, 2018)* the tariff for the rape of a juvenile is an imprisonment term between 11 years and 20 years.
  
9. For breach of order suspending sentence under section 28 (4) of the Sentencing and Penalties Act the court may impose a fine not exceeding 100 penalty units and in addition the court must restore the sentence or part sentence held in suspense and order the offender to serve it. But if the court considers that exceptional circumstances exist that make this unjust, the court may instead:
  - (a) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or
  - (b) in the case of a wholly suspended sentence, extend the period of the order suspending the sentence to a date not later than 12 months after the date of the order; or
  - (c) make no order with respect of the suspended sentence.

10. Section 30 (3) of the Juveniles Act also imposes a limit on the punishment of young persons, capping it at a maximum of two years imprisonment.

### **AGGRAVATING FACTORS**

11. The following aggravating factors are evident in this case:

a) Breach of Trust

The juvenile and the victim are from the same settlement but were not known to each other. The victim accompanied the juvenile to his house while carrying the juvenile's pawpaw. The juvenile breached the victim's trust by his actions. This type of offending has now become increasingly prevalent.

b) Planning

There is a degree of planning by the juvenile, he knew there was no one at his home so he asked the victim to carry his pawpaw to his house.

c) Victim's vulnerability

The victim was alone, vulnerable, and helpless. The juvenile took advantage of the situation and the circumstances that prevailed at the time.

d) Age difference

The victim was 7 years of age, while the juvenile was 14. The age difference is substantial, and the juvenile was the more mature of the two.

*“It can also be assessed that while “S.T.” is seen to be remorseful of his behaviour, ...the victims were of very tender ages and the effect of this criminal activity will definitely have a lasting impact on them. “S.T.” was given a second chance with all supervision, monitoring, and access to education, counselling and family support, however, the child did not control his urges and actions and failed to make a right decision to rehabilitate his life. He cannot be given another chance due to the seriousness of the offence.*

15. The court extends its appreciation to Ms. Vasemaca Uqeue of the Social Welfare Department for a well-written and thought-provoking pre-punishment report, which has been of immense assistance to the court.

#### **FAMILY SUPPORT**

16. The uncle of the juvenile, Solomone Tamanikaivugelei, appeared in court and pledged his full support for the juvenile. He has cared for the juvenile since infancy. It is noted that the juvenile had access to a mobile phone from an early age without supervision, and has been using such devices since the age of ten. The uncle accepted responsibility for the juvenile’s conduct. He expressed his willingness to pay a fine of \$100.00 and to enter into a good behaviour bond in the sum of \$400.00. Mr. Tamanikaivugelei resides in Veinuga, Tailevu, and earns approximately \$100.00 per week from the sale of farm produce at the roadside.
17. Solomone stated that it will be of assistance if the juvenile was kept at the Rehabilitation Centre so that he can undergo education and training. The first victim the juvenile’s cousin lives in the same village. He sought apologies on behalf of the juvenile.

18. The juvenile also expressed regret and remorse. He accepted responsibility for his actions and undertook not to reoffend. The juvenile apologized to his uncle for his conduct. He stated that his aspiration is to become a Fire Officer and acknowledged that he must pursue his studies to achieve this goal. The juvenile further admitted that, when provided with a mobile phone by his aunt, he accessed pornographic material.
19. Considering the objective seriousness of the offence committed, I select 1 year imprisonment as the starting point of the offence committed. The punishment is increased for the aggravating factors.
20. For the early guilty plea which I consider to be genuine and mitigation the punishment is further reduced. From the court file the juvenile has been in detention for about 6 months. The final punishment is now 1 year, 1 month and 10 days imprisonment.

#### **RESTORATION OF IMPRISONMENT TERM**

21. It is to be noted that the juvenile was earlier charged with one count of rape. When the juvenile appeared in High Court of Fiji at Suva, he pleaded guilty. On 20 May 2025, the court punished the juvenile to a custodial term of 10 months 20 days, wholly suspended for three years, with effect from 28 May 2025.
22. The current allegation is dated 20 August 2025, which is two months and twenty three days into the operational period of the suspended punishment. The power to restore the imprisonment term, wholly or partly held in suspense, and to order the juvenile to serve the same, is governed by section 28 (4) and (5) of the Sentencing and Penalties Act. The law also provides an exception, allowing the sentencing court to consider any

exceptional circumstances that would make the restoration of the imprisonment term unjust.

23. If the sentencing court is satisfied that exceptional circumstances exist the court may exercise its discretion not to make an order in favour of the breach of suspended sentence.
24. During the hearing I asked the juvenile's counsel to show cause why the juvenile's imprisonment term in the earlier case should not be restored (*see Isei Tamani vs. The State, HAA 90 of 2008, 28<sup>th</sup> November, 2008*). Counsel submitted to court the following factors:
  - a) 14 years of age at the time of the offending;
  - b) His family background, single parent where mother is mentally slow;
  - c) Sending to prison where he will meet other prisoners will not augur well for his future;
  - d) He needs help and constant supervision;
  - e) Needs to be kept engaged in activities and education;
  - f) Needs spiritual upbringing as well.
25. The court, after taking into consideration the submissions made by the counsel for the juvenile, is of the considered view that the circumstances of the earlier case are appalling. In that matter, the victim was his 13 year old cousin, a child with special needs. The juvenile was alone with the victim when he forcefully penetrated the victim's vagina with his penis several times. The current offending involves a 7 year old victim, whom the juvenile lured to his house.

26. The current offending occurred only two months and twenty three days after the suspended punishment order. This type of behaviour is unacceptable and borders on an unruly and depraved character of the juvenile. It was the responsibility of the juvenile and his caregivers to ensure that the orders of the High Court in Suva were strictly followed. At present, this court has strong reservations about the ability of the juvenile and his caretakers to respect any of the court orders. The juvenile has failed to utilize his chance towards rehabilitation.
27. In view of the above, there are no exceptional circumstances that would convince this court not to restore the earlier imprisonment term of the High Court of Fiji, Suva. The restoration of the imprisonment term for an earlier offending would not have a crushing impact on the juvenile. Conversely, it would be beneficial to him, as he will be kept under the supervision of trained social welfare officers. The uncle of the juvenile is hesitant to take the juvenile to his village because the first victim's father is his cousin and this victim lives near his house. The uncle of the juvenile supports the idea that the juvenile needs to be trained.
28. Fiji does not have a Juvenile Corrections Centre. However, to give effect to juvenile justice, the Fiji Juvenile Rehabilitation and Development Centre is the only facility where juveniles in conflict with the law may be kept. Section 30 (3) of the Juveniles Act uses the term "imprisonment". In absence of any Juvenile Corrections Centre, a juvenile who is detained pursuant to an order of imprisonment shall be kept at the Fiji Juvenile Rehabilitation and Development Centre.
29. In this case, the juvenile is 15 years and 6 months old. Under section 30 (3) of the Juveniles Act, the maximum punishment that may be imposed by the court is two years imprisonment. As much as, the court would wish the juvenile to be kept at the Fiji Juvenile Rehabilitation and Development

Centre until he attains the age of eighteen years, this is not legally possible considering the age of the juvenile.

30. The Juveniles Act, at section 32, provides the court with several methods of dealing with juvenile offenders. Section 32 (1) (h) states *“by dealing with the case in any other lawful manner.”* This provision leads to section 15 of the Sentencing and Penalties Act, which sets out a range of sentencing orders that may be made by the court. Section 15 (1) (k) provides that the court may *“impose any other sentence or make any other order that is authorized under this Act or any other Act.”*
31. In my considered judgment, within the framework of the Sentencing and Penalties Act, the term “sentence” is employed interchangeably with the term “punishment” in relation to juvenile proceedings. This drafting choice is illustrated by section 28 of the Sentencing and Penalties Act, which expressly provides for a “breach of order suspending sentence.”
32. In practice, however, the provision is applied to circumstances involving a breach of an order suspending punishment. The legislature’s use of the term “sentence” in this context must therefore be understood as encompassing the broader concept of punishment, particularly in the juvenile jurisdiction where the terminology of “punishment” is more commonly adopted.
33. The interchangeability of these terms reflects a deliberate legislative intent to ensure consistency across the statutory scheme, notwithstanding the distinct language employed in juvenile matters. It avoids duplicity of provisions and ensures that the enforcement mechanisms applicable to suspended sentences in adult cases are equally available in juvenile cases, albeit by use of the terms “suspended punishment”.

34. The above approach promotes coherence in the administration of justice, while recognizing the unique terminology historically associated with juvenile proceedings. The functional equivalence between “sentence” and “punishment” thus serves both a practical and doctrinal purpose, aligning statutory language with judicial practice and safeguarding uniformity in the application of enforcement provisions.
35. After careful consideration, the court finds that the only pragmatic and proportionate course is for the juvenile to be placed at the Fiji Juvenile Rehabilitation and Development Centre. In light of this determination, there is no necessity to commit the juvenile to prison. In lieu of a custodial term, the juvenile shall remain at the Fiji Juvenile Rehabilitation and Development Centre, Samabula, Suva, until he attains the age of seventeen years and six months.
36. The above position of the court reflects the court’s assessment that rehabilitation, rather than incarceration, best serves the interests of both the juvenile and the community. The Juvenile Centre provides a structured environment conducive to reform and development, thereby aligning with the rehabilitative objectives of juvenile justice. The order ensures accountability while avoiding the disproportionate consequences of imprisonment, which may undermine the prospects of reintegration. The court is satisfied that this measure achieves a balance between the need for discipline and the imperative of safeguarding the juvenile’s future.
37. Section 30(3) of the Juveniles Act provides that *“A young person shall not be ordered to be imprisoned for more than two years for any offence.”* It is important to note that the Fiji Juvenile Rehabilitation and Development Centre is not a prison or a corrections facility but an approved institution in accordance with section 36 of the Juveniles Act. It is a specialized

institution designed to ensure that juvenile offenders are afforded every opportunity to learn, reform, and rehabilitate themselves. The Juvenile Centre's purpose is to guide juveniles away from continued conflict with the law and to assist them in developing the skills and discipline necessary to become responsible citizens.

38. The distinction between imprisonment and placement at the Juvenile Centre underscores the rehabilitative philosophy underpinning juvenile justice. Whereas, imprisonment is primarily retributive, the Centre embodies a corrective and developmental approach, consistent with both domestic statutory objectives and international standards emphasizing the best interests of the child.
39. By situating juveniles in an environment that prioritizes education, vocational training, and personal development, the justice system seeks to reduce recidivism and promote reintegration into society. The court therefore recognizes that the statutory limitation on imprisonment must be read in harmony with the broader rehabilitative framework, ensuring that juvenile punishments remain proportionate, constructive, and future-oriented. The term of imprisonment of 10 months and 20 days by the High Court of Fiji in Suva is wholly restored and added to the punishment of 1 year, 1 month and 10 days imprisonment. This brings the total punishment to 2 years imprisonment.
40. In accordance with section 26 (2) (a) of the Sentencing and Penalties Act, the court has discretion to suspend the punishment, as the total term does not exceed three years.

41. In order to wholly or partially suspend an imprisonment term, the sentencing court must consider whether the punishment fits the crime committed by the offender. In this regard, the guidance offered by Goundar J. in *Balaggan vs. State, Criminal Appeal No. HAA 031 of 2011 (24 April, 2012)* at paragraph 20 is helpful:-

*“Neither under the common law, nor under the Sentencing and Penalties [Act], there is an automatic entitlement to a suspended sentence. Whether an offender’s sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purpose of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is whether the punishment fits the crime committed by the offender?”*

42. In this case the offences committed are serious and there is a need to help the juvenile with education and training away from home. Having considered section 4(1) of the Sentencing and Penalties Act, the court is of the view that a punishment of two years at the Fiji Juvenile Rehabilitation and Development Centre, to continue until the juvenile attains the age of seventeen years and six months, is just and appropriate in all the circumstances of the case. This order reflects the court’s duty to impose a punishment that is proportionate to the offence, while also mindful of the rehabilitative objectives that underpin juvenile justice.
43. The court is satisfied that placement at the Centre achieves a balance between accountability and reform. It ensures that the juvenile is subject to a structured environment conducive to rehabilitation, rather than the

harsher conditions of imprisonment. In reaching this conclusion, the court has taken into account the statutory framework, the age and personal circumstances of the juvenile, and the overarching principle that punishment must serve both the interests of justice and the prospects of reintegration. The measure imposed is therefore consistent with the legislative intent and with the broader philosophy of juvenile punishment, which prioritizes rehabilitation over retribution.

44. The only reason why the final punishment imposed falls below the tariff ordinarily applicable is that section 30(3) of the Juveniles Act imposes a statutory limit on the punishment for young persons. That provision expressly restricts imprisonment to a maximum of two years for any offence, thereby requiring the court to maintain its order within that legislative boundary.
45. In summary, what would otherwise have been a sentence of two years' imprisonment is, by operation of the statutory framework, made into an order that the juvenile be kept at the Fiji Juvenile Rehabilitation and Development Centre, Samabula, Suva, until he attains the age of seventeen years and six months.
46. This punishment ensures compliance with the statutory ceiling while maintaining the rehabilitative focus appropriate to juvenile justice. The court is satisfied that such an order is proportionate, lawful, and consistent with the objectives of both the Juveniles Act and the Sentencing and Penalties Act.

47. In all the circumstances, the court is satisfied that the orders set out below are designed to secure the juvenile's rehabilitation, safeguard the community, and promote the long-term reintegration of the juvenile into society.
48. The following orders are to take effect immediately:
- a) A punishment of two years' imprisonment is made into an order that the juvenile be confined at the Fiji Juvenile Rehabilitation and Development Centre, Samabula, Suva, until he attains the age of seventeen years and six months.
  - b) The Welfare Officer at the Fiji Juvenile Rehabilitation and Development Centre, or his or her representative, shall ensure that the juvenile is kept under a strict program of supervision and monitoring. The juvenile is to undertake education, training, counselling, and spiritual learning while at the Centre.
  - c) The primary caretaker of the juvenile, namely Solomone Tamanikaivugelei, shall pay a fine of \$100.00 within fourteen (14) days from today, payable at the Magistrates' Court in Nausori or at the High Court in Lautoka.
  - d) Solomone Tamanikaivugelei shall also sign a good behaviour bond on behalf of the juvenile in the sum of \$400.00.
  - e) The Social Welfare Department shall immediately arrange for the implementation of an individual management plan and life skills training for the juvenile, including programs designed to assist him in avoiding conflict with the law.

- f) The Social Welfare Department shall be at liberty to develop any programs or plans that are in the best interests of the juvenile.
- g) Upon release of the juvenile at the age of seventeen years and six months from the Fiji Juvenile Rehabilitation and Development Centre, the Social Welfare Department shall immediately arrange counselling for the juvenile in the presence of his mother, or caretakers, or guardians, or next of kin, with a view to assisting him to avoid adverse peer influence and to engage in meaningful activities, education, and training.
- h) The Social Welfare Department shall be at liberty to appoint a Community-Based Officer to assist and monitor the progress of the juvenile in accordance with the provisions of the Community-Based Corrections Act 2018.
- i) It shall be the responsibility of the mother, or caretakers, or guardians, or next of kin of the juvenile to ensure that he obeys any directions given by the Social Welfare Department and/or the Community-Based Officer.
- j) The Social Welfare Department shall provide assistance or counselling to the mother, or caretakers, or guardians, or next of kin of the juvenile, aimed at improving their parenting skills towards the juvenile.
- k) A copy of this order shall be served on the Officer in Charge of the Social Welfare Department in Lautoka, Nadi, and the Fiji Juvenile Rehabilitation and Development Centre, Samabula, Suva.

49. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**



**At Lautoka**

13 March, 2026

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission, for the Juvenile.**