

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 159 of 2022

STATE

V

NAZIR ALI

Counsel : Ms. Sheenal Swastika for the State
Ms. Nimita Sharma with Ms. Deepal Prasad for the Accused

Dates of Trial : 20-21 May 2025

Judgment : 13 November 2025

Sentence Hearing : 11 December 2025

Sentence : 20 March 2026

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

SENTENCE

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

FIRST COUNT

Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to Section 209 of the Crimes Act 2009.

Particulars of Offence

NAZIR ALI, on the 18th day of September 2022, at Lautoka, in the Western Division, assaulted **CJJ**, with intent to commit Rape.

SECOND COUNT

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to Section 26 (1) & (2) of the Bail Act 2002.

Particulars of Offence

NAZIR ALI, on the 18th day of September 2022, at Lautoka, in the Western Division, whilst being released on bail by the Lautoka Magistrates' Court vide CF 566/22, without reasonable cause, breached his bail condition by re-offending when ordered by Court not to re-offend.

THIRD COUNT

Statement of Offence

BREACH OF DOMESTIC VIOLENCE RESTRAINING ORDER: Contrary to Section 77 (1) (a) of the Domestic Violence Act 2009.

Particulars of Offence

NAZIR ALI, on the 18th day of September 2022, at Lautoka, in the Western Division, having notice of the Domestic Violence Restraining Order number 566 of 2022, by which he was bound, without reasonable excuse, contravened the said order by physically assaulting and sexually abusing CJJ, a protected person.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

NAZIR ALI, on the 18th day of September 2022, at Lautoka, in the Western Division, penetrated the anus of CJJ with his finger, without her consent.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

NAZIR ALI, on the 18th day of September 2022, at Lautoka, in the Western Division, penetrated the mouth of **CJJ** with his penis, without her consent.

SIXTH COUNT

Statement of Offence

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

Particulars of Offence

NAZIR ALI, on an occasion other than that referred to in the fourth Count, on the 18th day of September 2022, at Lautoka, in the Western Division, penetrated the anus of **CJJ** with his finger, without her consent.

SEVENTH COUNT

Statement of Offence

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

Particulars of Offence

NAZIR ALI, on the 18th day of September 2022, at Lautoka, in the Western Division, had carnal knowledge of **CJJ**, without her consent.

EIGHTH COUNT

Statement of Offence

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

Particulars of Offence

NAZIR ALI, on an occasion other than that referred to in the fourth and sixth Count, on the 18th day of September 2022, at Lautoka, in the Western Division, penetrated the anus of **CJJ** with his finger, without her consent.

- [2] You pleaded not guilty to the above mentioned charges and the matter proceeded to trial. The ensuing trial was held over 2 days. The prosecution in support of their case, called the complainant (CJJ), Dr. Salome Daunivalu, the Medical Officer who had conducted her medical examination and Woman Corporal 3961 Meredani Naba, the

Investigating Officer in the case. You exercised your right to remain silent. You also opted not to call any witnesses on your behalf.

- [3] At the conclusion of the evidence and having reviewed the said evidence, this Court found you guilty and convicted you of the charges of Assault with Intent to Commit Rape (Count 1), Breach of Bail Condition, (Count 2), Breach of Domestic Violence Restraining Order (Count 3), and the three counts of Rape as found in Counts 4, 5 and 7. You were found not guilty and acquitted of the two counts of Rape as found in Counts 6 and 8.
- [4] It was proved during the trial that on the 18 September 2022, at Lautoka, you assaulted the complainant with the intention to commit Rape (Count 1).
- [5] It was also proved during the trial that on the 18 September 2022, at Lautoka, whilst being released on bail by the Lautoka Magistrates' Court in Case No CF 566 of 2022, without reasonable excuse, you breached your bail condition by re-offending when ordered by Court not to re-offend (Count 2).
- [6] It was also proved during the trial that on the 18 September 2022, at Lautoka, having notice of the Domestic Violence Restraining Order No 566 of 2022 by which you were bound, without reasonable excuse, you contravened the said order by physically assaulting and sexually abusing the complainant, who was a protected person (Count 3).
- [7] It was further proved during the trial that on the 18 September 2022, at Lautoka, you penetrated the anus of the complainant, with your finger, without her consent and that you knew or believed that the complainant was not consenting, or you were reckless as to whether or not she was consenting (Count 4).
- [8] It was further proved during the trial that on the 18 September 2022, at Lautoka, you penetrated the mouth of the complainant, with your penis, without her consent and that you knew or believed that the complainant was not consenting, or you were reckless as to whether or not she was consenting (Count 5).
- [9] And it was further proved during the trial that on the 18 September 2022, at Lautoka, you penetrated the vagina/anus of the complainant, with your penis, without her consent and that you knew or believed that the complainant was not consenting, or you were reckless as to whether or not she was consenting (Count 7).
- [10] The complainant was 22 years of age at the time of the offending. At the time she testified in Court she was 25 years of age. It is admitted that you and the complainant were in a de-facto relationship and on the date of the incident were living together at Velovelo Road, Lautoka.
- [11] The complainant clearly testified to all the aforesaid incidents. I have referred to the complainant's evidence at length in my judgment.

[12] In terms of the Victim Impact Statement filed in Court, it is recorded that the complainant has been psychologically and emotionally traumatized by your actions. It is clear that the impact of your actions are continuing.

[13] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) sets out the purposes for which sentencing may be imposed by a Court. 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.

[14] I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and 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.

[15] 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.

[16] 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.

[17] Nazir Ali, I have duly considered the above factors as well in determining the sentence to be imposed on you.

[18] Nazir Ali, 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.

[19] 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.”

[20] 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.”

[21] In the case of **State v. Marawa** [2004] FJHC 338; HAC 16 of 2003S (23 April 2004); His Lordship Justice 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.”*

[22] It was further held in **Mohammed Kasim v. The State** (supra):

“.....We consider that in any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years.....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 that starting point.”

[23] 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.”

[24] In ***Aitcheson v State*** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); it was stated:

“[72] Undoubtedly it has been accepted by the society that rape is the most serious sexual 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.””

[25] It is settled that the tariff for a rape of an adult victim is a term of imprisonment between 7 years and 15 years-As per Gates J in ***State v. Marawa*** (supra) and Fernando J in ***State v. Naicker*** [2015] FJHC 537; HAC 279 of 2013 (15 July 2015).

[26] 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.”

[27] Nazir Ali, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentences at 7 years imprisonment for each count of Rape.

[28] The aggravating factors are as follows:

(i) You and the complainant were in a de-facto relationship and on the date of the incident were living together at Velovelo Road, Lautoka. Being so, you

should have protected and safeguarded the complainant. Instead you have breached the trust expected from you and the breach was gross.

- (ii) You had inflicted actual violence upon the complainant during the course of the incident which caused her much pain and suffering.
- (iii) Your conduct towards the complainant on the day of the incident had been especially degrading and humiliating.
- (iv) The impact of your actions on the complainant had been severe. The complainant has been emotionally and psychologically traumatized by your actions and the harm is said to be continuing.
- (v) The frequent prevalence of the offence of Rape in our society today.
- (vi) You are now convicted of multiple offending.

[29] Nazir Ali, considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 12 years imprisonment for each of the counts of Rape.

[30] Nazir Ali, you are now 25 years of age [Your date of birth being 11 February 2001]. You are said to be in a de-facto relationship for the past 3 years. You do not have any children from the said relationship. You are said to be a Hair Dresser by occupation, earning approximately \$300.00 per week. You are said to be the sole bread winner in your family and your de-facto partner is said to be financially dependent on you. However, it is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

[31] You are a first offender and a person of previous good character. The State too confirms this position. At the time of the incident, you were said to be 21 years of age, and as such a young offender. You are also said to be sincerely remorseful of your actions and seeks leniency from Court.

[32] Considering the fact that you are a first offender and a person of previous good character, and also that you were a relatively young offender and also considering your remorse to be genuine, I reduce 2 years from your sentences. As such, your sentence will be 10 years imprisonment for each count of Rape.

[33] I will now deal with the offence of Assault with Intent to Commit Rape (Count 1). The offence of Assault with Intent to Commit Rape in terms of Section 209 of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[34] In the case of *State v. Natuitagalua* [2016] FJHC 939; HAC111.2012 (17 October 2016); it was held that the tariff was between 1 year to 4 years imprisonment for the offence of Assault with Intent to Commit Rape in terms of Section 209 of the Crimes Act.

[35] 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 highlighted above, I impose on you a sentence of 3 years imprisonment for the first count of Assault with Intent to Commit Rape.

[36] I will next deal with the offence of Breach of Bail Condition, contrary to Section 26 (1) and (2) of the Bail Act No. 26 of 2002 [as amended by Bail (Amendment) Act No. 28 of 2012] (Bail Act) (Count 2). The maximum penalty for the offence of Breach of Bail Condition is a fine of \$2000 or 12 months imprisonment, or both.

[37] 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 highlighted above, I impose on you a sentence of 12 months imprisonment for the second count of Breach of Bail Condition.

[38] I will next deal with the offence of Breach of Domestic Violence Restraining Order, contrary to Section 77 (1) (a) of the Domestic Violence Act No. 33 of 2009 (Domestic Violence Act) (Count 3). The maximum penalty for the offence of Breach of Domestic Violence Restraining Order is a fine of \$1000 and a term of imprisonment of 12 months.

[39] 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 highlighted above, I impose on you a sentence of 12 months imprisonment for the third count of Breach of Domestic Violence Restraining Order. Since I am imposing on you a long term of imprisonment in this case (for the charges of Rape), it is my opinion to refrain from imposing a further fine as a penalty for this offence.

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

Count 1- Assault with Intent to Commit Rape contrary to Section 209 of the Crimes Act – 3 years imprisonment.

Count 2- Breach of Bail Condition contrary to Section to Section 26 (1) and (2) of the Bail Act – 12 months imprisonment.

Count 3- Breach of Domestic Violence Restraining Order contrary to Section 77 (1) (a) of the Domestic Violence Act – 12 months imprisonment.

Count 4- Rape contrary to Section 207 (1) and (2) (b) of the Crimes Act – 10 years imprisonment.

Count 5- Rape contrary to Section 207 (1) and (2) (c) of the Crimes Act – 10 years imprisonment.

Count 7- Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act – 10 years imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 10 years.

[41] Accordingly, I sentence you to a term of 10 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 8 years imprisonment.

[42] 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.”

[43] Nazir Ali, you were arrested for this case and produced in the Lautoka Magistrate’s Court on 22 September 2022 and remanded into custody. You were granted bail by the High Court of Lautoka on 5 January 2023. Thereafter, on 13 November 2025, upon your conviction for this case, you were remanded into custody once again. You have remained in custody up to date. Accordingly, you have been in custody for a total period of about 8 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 8 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

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

Head Sentence - 10 years imprisonment.

Non-parole period - 8 years imprisonment.

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

Head Sentence - 9 years and 4 months imprisonment.

Non-parole period - 7 years and 4 months imprisonment.

[45] 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 20th Day of March 2026

Solicitors for the State:
Solicitors for the Accused:

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