

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 198 OF 2023**

**STATE**

**V**

**FRANK JACK JOHNSON**

Counsel: Mr J.M. Rabuku for the State  
Mr E.J. Wainiqolo for Defence

Date of Judgment : 24 February 2026  
Dates of Sentence Submissions : 16, 17 March 2026  
Date of Sentence : 24 March 2026

**SENTENCE**

1. Frank Johnson, on the following information filed by the Director of Public Prosecutions (DPP), you were convicted after a contested trial of one count of Rape:

***Statement of Offence***

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

### *Particulars of Offence*

**FRANK JACK JOHNSON** on the 16<sup>th</sup> day of September 2023 at Nadi in the Western Division, had carnal knowledge of **MARGERY MELODIE MARY BINGWOR**, without her consent.

2. The victim is your first cousin. She was 33 years old at the time of the offence and married with three children. She and her niece, who came from Suva, arrived at your residence in Nadi to celebrate her graduation and stay for the weekend. Upon her arrival, you offered them drinks (alcohol). After having a few drinks, you all went out clubbing and continued drinking. You all returned home when the nightclub was closed. You went to sleep in your room while the victim slept in the guest room. When she was still asleep, you entered the guest room without her permission. You penetrated her vagina with your penis without her consent. She got up when she felt being penetrated. She got mad and asked you to get off her immediately. The following day, she returned home in Suva and, after speaking with her husband, reported the matter to the police.
  
3. I must pass a sentence that is proportional to the gravity of the offence and the degree of responsibility of the offender (moral culpability). The punishment should fit the crime, not be excessive, and reflect the seriousness of the conduct. In selecting a sentence that fits the offence, the Courts must have regard to the proportionality principle—enshrined in the Constitution—and established sentencing principles in the Sentencing and Penalties Act. These cardinal principles require that the punishment be proportionate not only to the gravity of the offence but also to the personal circumstances of the offender.
  
4. I would consider the maximum penalty prescribed for the offence, the current sentencing practice and the applicable sentencing guidelines in crafting your sentence as the standard, legally recognised approach designed to ensure justice, consistency, and fairness. Considering the seriousness of the offence and the harm caused to the victim, I would select the appropriate starting point. The final sentence

will be determined after making appropriate adjustments for the aggravating and the mitigating factors.

5. The maximum sentence for Rape is life imprisonment. The sentencing tariff for adult rape ranges from 7 years to 15 years' imprisonment<sup>1</sup>. The starting point is at least seven years' imprisonment. The proper sentence may be substantially higher or lower than that starting point, depending on the circumstances of the case<sup>2</sup>.
6. Sentencing and Penalties Act mandates that the courts must hold the offender accountable, denounce the behaviour, protect the community, deter the offender (and others), and promote rehabilitation<sup>3</sup>. Sexual offences are on the rise and are most prevalent in Fiji. Increased prevalence warrants a punitive approach aimed at general deterrence. The offenders must receive condign punishment to mark the society's outrage and to denounce sexual abuse in our society.
7. Rape is a crime of power, control, and aggression, often perpetrated by someone the victim knows, and it is never the fault of the victim. Consuming alcohol and clubbing do not imply consent to sexual activity, nor do they excuse the actions of a perpetrator. You appeared to have misunderstood that drinking and socialising are invitations to rape. You now pay the price for the error of judgment.
8. Having taken into consideration the seriousness of the offence, the culpability and the harm caused to the victim, I select a starting point of 7 years from the bottom of the sentencing tariff.

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<sup>1</sup> Rokolaba v State [2018] FJSC 12 (26 April 2018); State v Marawa [2004] FJHC 338

<sup>2</sup> Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994) ; State v Marawa [2004] FJHC 338];  
Rokolaba v State [2018] FJSC 12 (26 April 2018)

<sup>3</sup> Section 4 of the SPC

9. The Counsel have filed helpful sentencing/ mitigation submissions for which I am grateful. The following aggravating and mitigating factors have been identified, which will be used to make appropriate adjustments to the starting point.
10. It is aggravating that you committed this offence on a vulnerable victim when she was drunk and asleep. The offence was committed after having consumed alcohol. The victim is your first cousin. She treated you as her older brother. She joined you in drinking and socialising because she had the utmost trust in you. You breached that trust.
11. Sentences in rape cases should reflect abhorrence when committed in a domestic setting because such acts constitute a profound breach of trust, aggravate the violation of the victim's safety, and often involve ongoing power imbalances. Courts treat rape within a domestic or family setting as an aggravating factor rather than a private matter, recognising that it transforms a place of safety into a place of danger.
12. The evidence revealed that the victim is highly embarrassed when you tried to put the blame on her. She was traumatised with long-lasting effects. It was not a pre-planned, predatory "spiking" incident, but rather a criminal act taken advantage of during a social situation where intoxication was present.
13. I considered the mitigating circumstances that your counsel has submitted. I am informed that you are 46 years of age and a divorcee with a son aged 17. You were a seafarer, earning around \$2100 per fortnight. You are the sole breadwinner of your family, looking after your elderly mother who is labouring under hypertension and kidney problems. I can understand the hardship your mother and the child would face when you go to prison. Unfortunately, my hands are tight. You should have thought about the consequences before committing the offence. Your personal circumstances, however, are of little mitigating value.

14. You are a first offender. You have maintained a clear record in your life until you committed this offence. You cooperated with the police, and you beg mercy of this court.
15. According to the records, you had spent approximately a month in remand before the trial. I would consider your remand period as part of your sentence already served. I add 2 years to the starting point of 7 years for the above-mentioned aggravating factors to arrive at an interim sentence of 9 years' imprisonment. I would reduce 1 year for the mitigating factors and remand period to arrive at a final sentence of 8 years' imprisonment.
16. You are a first offender. I believe you still have a chance for rehabilitation. To balance rehabilitation potential with other sentencing purposes, I impose a non-parole period of 7 years.
17. Summary  
Frank Jack Johnson, you are sentenced to an imprisonment term of eight (08) years with a non-parole period of seven (07) years. You are eligible for parole after serving seven (7) years in the correctional facility.
18. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge

24 March 2026

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for the State  
Law Solutions for Defence