

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 29 of 2024

STATE

V

AMINIASI NATOBU

Counsel : Mr. V. Koroinivalu for the State.
: Mr. F. Daveta and Ms. Tuimanono for the
Accused.

Dates of Hearing : 11, 12 February, 2026
Closing Speeches : 17 February, 2026
Date of Judgment : 17 February, 2026
Date of Sentence : 27 February, 2026

SENTENCE

(The name of the victim is suppressed she will be referred to as "R.V")

1. In a judgment delivered on 17 February 2026, this court found the accused guilty of the alternative offence of common assault , two counts of sexual assault, one count of rape, and one count of indecent assault. He was accordingly convicted.

2. The brief facts are as follows:

- a) The victim, aged 20, is the niece of the accused. They resided in the same village, and the victim was staying at the accused's house to assist with household chores, as his wife was unwell.
- b) On 16 January 2024, while alone at the accused's house, the victim completed her chores, showered, and lay on her stomach in the sitting room. Around midday, she felt someone touch her shoulder down to her buttocks before being turned over to face upwards. She saw that it was the accused, who proceeded to touch her breasts while restraining her legs. He then covered her mouth with his hand, removed her pants, and forcefully penetrated her vagina with two fingers.
- c) The victim became frightened and began to cry. The accused told her not to tell anyone. She returned home, but did not disclose the incident to her parents. Later that afternoon, the accused telephoned the victim, inviting her to his house for dinner. Believing the incident would not be repeated, she went. The accused behaved normally during the evening.
- d) On 21 January 2024, at about 4:00 a.m., while sleeping at the accused's house, the victim awoke to find the accused applying oil to her stomach. She subsequently confided in her best friend, Sitiveni Naquna, about the accused's actions. The victim did not consent to the accused's conduct. The matter was reported to the police, following which the accused was arrested, caution interviewed, and charged.

3. The state counsel filed his sentence submissions including, the victim impact statement, and the defence counsel filed mitigation, for which this court expresses its appreciation.

4. The following personal details and mitigation have been submitted by the counsel for the accused:
 - a) The accused is a first offender;
 - b) He was 64 years of age at the time;
 - c) Married;
 - d) Was a Farmer and sole breadwinner for the family;
 - e) Regrets his actions and realizes that his actions were unwarranted;
 - f) Seeks leniency of the court.

5. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs.- The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

AGGRAVATING FACTORS

6. The following aggravating factors are obvious:

- (a) Breach of Trust

The victim is the niece of the accused. By his actions, the accused grossly breached the trust reposed in him by the victim. He also abused the sanctity of the familial relationship that existed between them.

- (b) Planning

There is a degree of planning involved. The accused chose to abuse the victim when she was alone in his house. He was aware of her vulnerability and nevertheless continued with his unlawful conduct.

(c) Age Difference

The victim was 20 years of age, whereas the accused was 64. The disparity in age is substantial.

(d) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

a) Gets scared whenever she sees the accused and his families.

(e) Prevalence of the offending

There has been a notable increase in sexual offence cases involving victims targeted by mature adults known to them. In this case, the accused, being the elder of the two, acted without hesitation or regard for the consequences of his conduct towards his niece. His actions were bold and undeterred.

(f) Safety at home

The victim was supposed to feel safe in the accused's house. However, this was not to be due to the accused's actions.

TARIFF

RAPE

7. The maximum penalty for the offence of rape is life imprisonment and the accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.

8. In *Mohammed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May 1994*, the Court of Appeal had stated:

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

SEXUAL ASSAULT

9. The maximum penalty for the offence of sexual assault is 10 years imprisonment. The tariff for this offence is from 2 years to 8 years imprisonment depending on the category of offending (*see State vs. Epeli Ratabacaca Laca criminal case no. HAC 252 of 2011 (14 November, 2012)*). At paragraphs 6 and 7 Madigan J. had stated the following:

6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in Abdul Kaiyum HAC 160 of 2010 that the range of sentences should be between two to eight years. 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.

7. 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).

These very sensible categories of offending are adopted by this Court and they provide a very useful guide to sentencing within the tariff of two to eight years.

INDECENT ASSAULT

10. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment (*Rokota vs. The State, criminal appeal no. HAA 0068 of 2002*).

COMMON ASSAULT

11. The maximum penalty for the offence of common assault is 1 year imprisonment.

12. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

13. I am satisfied that the five offences for which the accused stands convicted arise from the same facts and are of the same and similar character. Accordingly, taking into account section 17 of the Sentencing and Penalties Act, I prefer to impose an aggregate sentence of imprisonment for the five offences.

14. Bearing in mind the objective seriousness of the offending, I take 7 years imprisonment (lower range of the scale) as the starting point for the aggregate sentence. The sentence is increased by 4 years to reflect the aggravating factors, resulting in an interim sentence of 11 years imprisonment. Although the personal circumstances and family background of the accused carry little mitigatory weight, his good character and other factors in mitigation have substantive value. The

sentence is therefore reduced by 2 years and 4 months. The aggregate sentence is now 8 years and 8 months imprisonment.

15. I also note the accused has been in remand for approximately 1 month and 23 days. In exercise of my discretion, and in accordance with section 24 of the Sentencing and Penalties Act, the sentence is further reduced by 1 month and 25 days to reflect the period of imprisonment already served.
16. The final aggregate sentence of imprisonment for the alternative count of common assault, two counts of sexual assault, one count of rape, and one count of indecent assault is 8 years, 6 months and 5 days imprisonment.
17. Having considered section 4 (1) of the Sentencing and Penalties Act, and the serious nature of the offences committed against the victim I am compelled to state that the purpose of this sentence is to punish offenders to an extent and in a manner that is just in all the circumstances of the case, and to deter offenders and other persons from committing offences of the same or similar nature.
18. Pursuant to section 18 (1) of the Sentencing and Penalties Act (as amended), I impose a non-parole period of 7 years to be served before the accused becomes eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused, while also meeting community expectations is just in the circumstances of this case.
19. The court cannot ignore the fact that, the accused whilst being punished, should be afforded every opportunity to undergo rehabilitation. A non-parole period set too close to the final aggregate sentence will not be justified for this reason.

20. In this regard, I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 Calanchini P (as he was) said:

[2] The purpose of fixing the non-parole term is to fix the minimum term that the Appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Decree 2009 as to what matters should be considered when fixing the non-parole period, it is my view that the purposes of sentencing set out in section 4(1) should be considered with particular reference to re-habilitation on the one hand and deterrence on the other. As a result the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of re-habilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent. It must also be recalled that the current practice of the Corrections Department, in the absence of a parole board, is to calculate the one third remission that a prisoner may be entitled to under section 27 (2) of the Corrections Service Act 2006 on the balance of the head sentence after the non-parole term has been served.

21. The Supreme Court in accepting the above principle in *Akuila Navuda v The State* [2023] FJSC 45; CAV0013.2022 (26 October 2023)] stated the following:

Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise there will be little incentive for prisoners to behave themselves in prison, and the advantages of incentivising good behaviour in prison by the granting of remission will be

lost. The difference of only one year in this case was insufficient. I would increase the difference to two years. I would therefore reduce the non-parole period in this case to 12 years.

22. Mr. Natobu, you have committed serious offences against your niece, who trusted you and was performing a good deed by attending to your household chores. This is not the way to repay her for her kindness. I am sure the victim will find it difficult to forget what you did to her. Your actions towards the victim were deplorable and selfish. This court would be failing in its duty if a deterrent custodial sentence were not imposed.
23. I am satisfied that the term of 8 years, 6 months and 5 days imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had ordered separate terms of imprisonment for each offence.
24. In summary I impose an aggregate sentence of 8 years, 6 months and 5 days imprisonment for the five counts of offences of which the accused stands convicted, with a non-parole period of 7 years to be served before the accused becomes eligible for parole.
25. Considering the closeness of the relationship between the victim and the accused, a permanent non-molestation and non-contact orders are hereby issued for the protection of the victim.

26. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

27 February, 2026

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Daveta Advocates, Lautoka, for the Accused.