

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

**CRIMINAL CASE NO: HAC 63 of 2020**

**STATE**

**V**

**SAILASA SAUKURU**

**Counsel** : Mr. Joeli Nasa for the State  
Mr. Eparama Sailo for the Accused

**Dates of Trial** : 31 May 2023 and 1 June 2023

**Judgment** : 24 August 2023

**Sentence Hearing** : 12 October 2023

**Sentence** : 25 October 2023

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

**SENTENCE**

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

**FIRST COUNT**

***Statement of Offence***

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

***Particulars of Offence***

**SAILASA SAUKURU**, on the 6<sup>th</sup> day of March 2020, at Nadi, in the Western Division, penetrated the vagina of **SN** with his fingers, without the consent of the said **SN**.

## SECOND COUNT

### *Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

### *Particulars of Offence*

**SAILASA SAUKURU**, on the 6<sup>th</sup> day of March 2020, at Nadi, in the Western Division, unlawfully and indecently assaulted **SN** by squeezing her breast.

- [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 and her mother Vilisi Liku Nadoi. You testified on your own behalf and also called Jonacani Vatanitawake, the Assistant Roko Tui Ba, and Asaeli Naulago, the husband of the complainant, to testify in support of your case.
- [3] At the conclusion of the evidence and having reviewed the said evidence, this Court found you guilty and convicted you of the two charges.
- [4] It was proved during the trial that on the 6 March 2020, at Nadi, you penetrated the vagina of the complainant, with your fingers, 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 1).
- [5] It was also proved during the trial that on the 6 March 2020, at Nadi, you unlawfully and indecently assaulted the complainant, by squeezing her breast with your hands (Count 2).
- [6] The complainant was 30 years of age at the time of the offending. At the time she testified in Court she was 33 years of age. It is admitted that you and the complainant were both residing at Sabeto Village and were neighbours at the material time. It is also admitted that the complainant is your sister-in-law as she is married to your brother.
- [7] The complainant clearly testified to all the aforesaid incidents. I have referred to the complainant's evidence at length in my judgment.
- [8] 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.
- [9] 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.*

**[10]** 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.

**[11]** 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.”*

[12] Sailasa Saukuru, the offence of Rape in terms of Section 207(1) of the Crimes Act carries a maximum penalty of imprisonment for life.

[13] 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.”*

[14] 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.”*

[15] 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.”*

[16] 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.”*

[17] 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.”*

[18] 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.””*

[19] 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).

[20] 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.”*

**[21]** Sailasa Saukuru, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 7 years imprisonment for the count of Rape.

**[22]** The aggravating factors are as follows:

- (i) You are the brother-in-law of the complainant. The complainant is married to your biological brother. 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) There was a large disparity in age between you and the complainant. The complainant was 30 years of age, at the time you committed these offences on her. At the time of the offending you were 66 years of age. Therefore, you were over 35 years older than the complainant or double her age.
- (iii) The complainant was known to be suffering from epilepsy. You took advantage of the complainant's vulnerability, helplessness and naivety.
- (iv) The frequent prevalence of the offence of Rape in our society today.
- (v) The complainant has been emotionally and psychologically traumatized by your actions and the harm is said to be continuing.
- (vi) You are now convicted of multiple offending.

**[23]** Considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 12 years imprisonment for the count of Rape.

**[24]** Sailasa Saukuru, you are now 69 years of age [your date of birth being 17 November 1953]. You will be turning 70 in a few days from now. You are married with two children. You are said to be married for over 30 years. You are said to be working as a Groundsman at the Sabeto Mudpool and Hotspring. However, it is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.

**[25]** You are a first offender and a person of previous good character. The State too confirms this position. It is also submitted in mitigation that you fully co-operated with the Police during the investigations into this matter. You are also said to be remorseful of your conduct and promise not to re-offend.

**[26]** You are said to be the Turaga ni Tokatoka of iTokatoka Betosewa, a position you have held for more than 30 years. You are also to take up the role of Turaga ni Mataqali Drakoro to look after the said Mataqali and its members. You are also said to be an active member of the Sabeto Village Community via your role as Turaga ni Tokatoka.

- [27] Character references have been provided on your behalf by Reverend Peni Ketebaca of the Sabeto Methodist Church; Pastor Lisala Ledua Ligavatu, Head of Social Welfare, Sabeto Methodist Church; Tela Qoro, Turaga ni Yavusa Nasara of Sabeto Village; Apisalomi Saukuru, Turaga ni Koro, Sabeto Village; and Lui Burivosa of the Sabeto Hotspring and Mudpool. This Court has duly considered the said character references submitted on your behalf.
- [28] Considering the fact that you are a first offender and a person of previous good character, and also considering the fact that you had fully co-operated with the Police during the investigations into this matter and also considering your remorse to be genuine, I reduce 3 years from your sentence. As such, your sentence is 9 years imprisonment for the count of Rape.
- [29] I will now deal with the offence of Sexual Assault (Count 2). The offence of Sexual Assault in terms of Section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.
- [30] In the cases of *State v. Abdul Khaiyum* [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012); and *State v. Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.
- [31] It was held in *State v. Laca* (supra) “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.”

“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)."

[32] In this case, as per Count 2, it has been proved that you unlawfully and indecently assaulted the complainant, by squeezing her breast with your hands. Therefore, in my opinion, the offence in Count 2 should be categorized under Category 3 above.

[33] 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, I impose on you a sentence of 5 years' imprisonment for the second count of Sexual Assault.

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

Count 1- Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act – 9 years' imprisonment.

Count 2- Sexual Assault, contrary to Section 207 (1) and (2) (a) of the Crimes Act - 5 years' imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 9 years.

[35] Accordingly, I sentence you to a term of 9 years imprisonment.

[36] The next issue for consideration is whether this Court should grant you any concessions due to your current advanced age of 69 years (you will turning 70 on the 17 of November 2023).

[37] Her Ladyship Madam Justice Nazhat Shameem in the case of *Rokota v. The State (supra)* held as follows:

*"...However, the Appellant is 64 years old. There are special sentencing principles for the sentencing of the elderly, particularly those of previous good character."*

[38] Making reference to Principles of Sentencing (2<sup>nd</sup> Edition), by D. A. Thomas, Her Ladyship said:

*"Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly offenders, and the Court has upheld sentences of imprisonment on men in their seventies. It is however a long-established principle that a sentence should normally*

*be shortened so as to avoid the possibility that the offender will not live to be released.”*

[39] However, considering all the facts and circumstances of this case, especially the fact that the complainant was your own sister-in-law who was less than half your age, I am not inclined to reduce the primary sentence or head sentence I am imposing on you.

[40] Accordingly, I sentence you to a term of 9 years’ imprisonment. However, in determining the non-parole period to be imposed on you, I have given due consideration to your advanced age. Accordingly, pursuant to the provisions of Section 18 (1) of the Sentencing and Penalties Act, I fix your non-parole period as 6 years’ imprisonment.

[41] 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.”*

[42] Sailasa Saukuru, you were arrested for this case and produced in the Nadi Magistrate’s Court on 18 March 2020 and remanded into custody. You were granted bail by the High Court of Lautoka on 9 June 2020. Thereafter, on 24 August 2023, upon your conviction for this case, you were remanded into custody once again. Accordingly, you have been in custody for a total period of about 5 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 5 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

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

Head Sentence - 9 years’ imprisonment.

Non-parole period - 6 years’ imprisonment.

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

Head Sentence - 8 years’ and 7 months imprisonment.

Non-parole period - 5 years’ and 7 months imprisonment.

[44] You have 30 days to appeal to the Court of Appeal if you so wish.



AT LAUTOKA

Dated this 25<sup>th</sup> Day of October 2023

Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

**Solicitor for the State:**

**Solicitor for the Accused:**

**Office of the Director of Public Prosecutions, Lautoka.**

**KLaw Chambers & Partners, Barristers & Solicitors, Nadi.**