

**IN THE HIGH COURT OF FIJI AT SUVA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 250 of 2023**

**The State vs Emoni Davui**

**For the State: Ms. P. Ram**

**For the Accused: Mr. S. Ravu**

**Date of Judgment: 13<sup>th</sup> March 2025**

**Date of Judgment: 9<sup>th</sup> May 2025**

**SENTENCE**

1. Emoni Davui was charged with the offence of Rape as set out in the following Information:

*Statement of Offence*

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

*Particulars of Offence*

**EMONI DAVUI** on the 24<sup>th</sup> of May 2023, at Nacokaika, Naitasiri, in the Eastern Division penetrated the vagina of **MELIKA MALAKE**, with his penis without her consent

2. After Trial, the Court convicted him of the offence of Rape and time was given for mitigation and for sentencing recommendations by the State.

**Mitigation**

3. The Accused, through counsel, offered the following plea in mitigation: -
  - (a) He is now 38 years of age, married with 7 children ranging in age from 17 years of age to 1 year 3 months old.
  - (b) He resides at River Road, Narere and he is a carrier driver earning approximately \$300 per week.

- (c) He is a first offender and is a person of previous good conduct.
- (d) He has spent time in remand and this period should be deducted as time already served.
- (e) The Accused relies on the following cases – State vs Koroj [2019] FJHC 243; State vs Khan [2018] FJHC 1136; and Tunaserau vs State [2024] FJCA 99; AAU 169 of 2019)30 May 2024).
- (f) The Accused respectfully submits that the Court should take into consideration the above mitigating factors when passing sentence on the Accused.

#### Sentencing recommendations

4. The State has also filed sentencing recommendations as follows: -

- (a) The Accused has been convicted of Rape, an offence which attracts a maximum sentence of life imprisonment.
- (b) The current tariff for child rape was set by the Supreme Court in the case of Aitcheson vs State [2018] FJSC 29; CAV 12 of 2018 (2 November 2018).
- (c) The State offers the following as aggravating factors – breach of trust as the Accused is the Accused’s grand uncle; the large disparity in ages between the Accused and the victim, the continuing trauma and impact on the victim as her reputation has been damaged in the village with people spreading stories about her.
- (d) With respect to mitigation, the State submits the authority of Drotini vs State [2006] FJCA 26; AAU 1 of 2005S (24 March 2006) where the Court of Appeal held that there are very few possible mitigating circumstances beyond a plea of guilty.
- (e) The State confirms that the Accused is a first offender and a person of previous good conduct.
- (f) For this case he was remanded from 21 July 2023 to 29 September 2023 therefore he has spent approximately 3 months and 8 days in remand.
- (g) The State therefore submits that this is a case which warrants a deterrent sentence which must reflect the Court’s disapproval of this kind of behavior and the desire to protect women from sexual abuse in Fiji.

## Analysis

5. The offence of Rape attracts a maximum sentence of life imprisonment and the victim in this case was 15 years of age, therefore she is considered as a child.
6. Rape attracts a maximum sentence of life imprisonment and for a child rape, the Supreme Court set the tariff in the case of Aitcheson vs State {2018} FJSC 29; CAV 12 of 2018 (2<sup>nd</sup> November 2018). The tariff for child rape now ranges from 11 years to 20 years imprisonment.
7. The Supreme Court in the case of Felix Ram vs State [2015] FJSC 26; CAV 12 of 2015 (23<sup>rd</sup> October 2015) have set down the factors to be considered by the sentencing Court as follows: -

“Factors to be considered in such cases could be:

- (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.”

8. The only mitigating factor in this case is the Accused’s previous good conduct as a first offender. There are no other mitigating factors as these are the Accused’s personal circumstances that have no bearing on the offending in this matter.
9. The major aggravating factor in this case is the breach of trust as the Accused is an elder relative of the victim and he was expected to protect her, instead he committed this offence on her.
10. The Accused has also not expressed any remorse or regret for his actions and this also aggravates the offending.
11. In preparing the sentence, I take note of the provisions of section 4 (1) and (2) of the Sentencing and Penalties Act 2009. As there is a domestic relationship between the parties I have also considered the provisions of section 4 (3) of the Act.
12. After considering the facts adduced at Trial, I find that the Accused’s culpability is high and he is solely responsible for the offending. The offending lies at the lower end for such offences as no violence was used, although coercion and oppression was used to obtain consent.
13. In sentencing you Emoni Davui I adopt a starting point of 12 years imprisonment and I deduct 2 years for your previous conduct as a first offender.
14. For this case you were remanded for a period of 3 months and 8 days, which I round off to 3 months imprisonment. This period will be deducted as time already served.
15. This leaves you with a sentence of 9 years 9 months imprisonment.

16. Pursuant to section 18 (1) of the Sentencing and Penalties Act 2009, I direct that you must serve 7 years and 9 month's imprisonment before you can be eligible for parole.

17. In addition there will be a final Domestic Violence Restraining Order (Standard Non Molestation Conditions) as there is a domestic relationship with the victim.

**Emoni Davui this is your sentence: -**

1. For the offence of **Rape**, you are sentenced to 9 years 9 month's imprisonment and you will serve a non-parole period of 7 years 9 months imprisonment.
2. I issue a final Domestic Violence Restraining Order (Standard Non Molestation Conditions) for the protection of the victim Melika Malake. You are hereby warned that if there is a breach of this DVRO you may be subject to prosecution for the same.

**30 days to appeal**



**Mr. Justice U. Ratuveli  
Puisne Judge**

**cc: Office of the Director of Public Prosecutions  
Office of the Legal Aid Commission**