

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 268 of 2022

STATE

v

SETAREKI TUISAWA

Counsel: Ms. K. Semisi & Mrs. U. Ratukalou for the State
Mr. T. Varinava for the Accused

Date of Mitigation/Sentencing submission: 16 April 2025

Date of Sentencing: 7 May 2025

SENTENCE

Caveat - The victim shall herein be referred as '**NUR**' pursuant to the name suppression Order.

1. **Setareki Tuisawa**, the accused, was tried, found guilty and convicted on 21 February 2025 for the 3 counts of *Rape* laid out as follows in the Amended Information by the Director of Public Prosecutions dated 15 September 2023 and filed on 21 September 2023:

COUNT ONE

Statement of Offence

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

Particulars of Offence

SETAREKI TUISAWA on an unknown date between the 1st day of April 2020 and the 31st day of December 2020, at Navua in the Central Division, penetrated the vagina of **NUR** with his penis, without her consent.

COUNT TWO

Statement of Offence

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

Particulars of Offence

SETAREKI TUISAWA on the 4th day of January 2021 at Navua in the Central Division, penetrated the vagina of **NUR** with his penis, without her consent.

COUNT THREE

Statement of Offence

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

Particulars of Offence

SETAREKI TUISAWA on the 25th day of June 2021 at Navua in the Central Division, penetrated the vagina of **NUR** with his penis, without her consent.

2. Plea in mitigation and sentencing submission by Mr. T. Varinava of the Legal Aid Commission on behalf of Setareki Tuisawa followed by the State's sentencing submission were made on 16 April 2025, and this is the Court's finding on sentence.

Rape sentencing analysis – Counts 1, 2 and 3

3. In this case, **Rape** is contrary to section 207(1) & (2)(a) of the Crimes Act 2009, and the maximum penalty is life imprisonment.
4. The sentencing tariff for rape of a child including persons under 18 years is 11 to 20 years imprisonment according to Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018), and at paragraphs 24 – 25, the Supreme Court held:

[24] The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise discretion taking into account the age group of these child victims. I do not for myself believe that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

[25] The tariff previously set in Raj v The State [2014] FJSC 12; CAV0003.2014 (20th August 2014) should now be between 11 – 20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.

5. Furthermore, in Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015), at paragraphs 25 – 26, the Supreme Court *inter alia* provided a non-exhaustive list of factors to be considered by the court when sentencing a child rapist:

[25] In this case we are informed of pain having been caused to the 9 year old girl, but not as to whether she had required any medical treatment thereafter or whether she had suffered any psychological distress. Courts will be wise therefore to tread carefully before downgrading the type of penetration suffered, and instead to focus on the overall impact on the victim. The real consideration is, whatever the intruding object used, how horrific were the overall circumstances of the crime to the victim.

[26] 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 the 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.*

6. Section 2(1) of the Interpretation Act (Cap 7) and section 2 of the Juveniles Act (Cap 56) provide:

- Interpretation Act (Cap 7) s.2(1) – *In this Act and in every other written law and in all public documents enacted, made or issued before or after the commencement of this Act the following words and expressions shall have the meanings hereby assigned to them respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:- “child” means a person under the age of fourteen years; ...*
- Juveniles Act (Cap 56), s.2 - *“child” is a person who has not attained the age of fourteen (14) years; and “young person” means a person who has attained the age of 14 years, but who has not attained the age of 17 years.*

7. The complainant **NUR** was born on 25 June 2007, thus based on the aforesaid statutory provisions, I shall consider **NUR** to be a ‘child’ for purposes of the *Rape* in Counts 1 & 2, and a ‘young person’ for purposes of the *Rape* in Count 3.

8. Section 17 of the Sentencing and Penalties Act 2009 state:

17. 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.

9. The sentencing approach to be adopted by this Court shall be in accordance with section 17 of the Sentencing and Penalties Act 2009 given the nature and extent of the offending.
10. Given the sentencing tariff of 11 to 20 years imprisonment for rape of a *child* and *young person*, for this instant, I choose a **starting point** of 13 years imprisonment.
11. The starting point of 13 years is enhanced by 6 years due to the following **aggravating factors**, bearing in mind the list of factors provided by the Supreme Court in Ram v State (supra):
 - a) The accused raped NUR who is his half-sister, by intentionally penetrating NUR's vagina with his penis without NUR's consent.
 - b) The accused had acted opportunistically and atrociously, taking advantage and threatening his half-sister NUR, then raping her even on her 14th birthday on 25 June 2021, knowing full well that NUR did not consent to him inserting his penis into her vagina.
 - c) This is an incestuous and heinous rape of a vulnerable child and young girl resulting in her becoming pregnant and prematurely giving birth to a baby boy, and a grave violation of sacrosanct cultural and religious taboo prohibiting intimate and sexual relations based on consanguinity including that of half-brother and half-sister.
 - d) This is also a blatant betrayal of trust by the accused who is a 35 year adult married man with 2 children and NUR's half-brother, deemed and obliged to uphold good morals and values, protect and prevent vulnerable young girls like NUR from being raped and sexually violated.
 - e) The complainant NUR, being raped by her half-brother the accused, within the very home in which she should find love, comfort and security, has undoubtedly suffered emotional and psychological trauma. In the *Victim Impact Statement* dated 1 April 2025, the complainant NUR wrote:

"After what my brother Setareki did to me: I feel scared and prefer to stay

alone; I started to hate all men and ashamed of myself; I started to get angry without any reasons, and withdraw myself from talking to people; I stopped talking to my parents, and I don't know if they are angry at me; and I loose focus in school, I started to stare out the window and flash back of memories comes back, and I would mingle with friends in class to distract me from the flash backs.”

The Supreme Court in Aitcheson v State (supra) at paragraph 72 held, “[72] [u]ndoubtedly it has been accepted by the society that rape is the most serious 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.””

f) Rape of a *child* and *young person* are becoming prevalent in Fiji, thus a scourge and menace to the entire society, compelling the need for holistic means to properly and effectively deter and prevent such societal bane. Deterrence is highly warranted weighed together with *inter alia* the sentencing objectives of punishment, retribution and rehabilitation.

12. The 19 years is reduced by 3 years due to the **mitigating factors** considering that Setareki Tuisawa is 35 years old, divorced with a son in class 5 and daughter in class 3, and financially supported his 2 children working as a waiter earning \$135 per week.

Time spent in custody

13. Of the 16 years imprisonment, a further deduction of 13 months is made for **time spent in custody** pursuant to section 24 of the Sentencing and Penalties Act 2009, thus arriving at the custodial term of 15 years 11 months.

Aggregate sentence

14. Pursuant to section 17 of the Sentencing and Penalties Act 2009, the aggregate sentence of imprisonment for *Rape* in Counts 1, 2 and 3 of the indictment is 15 years 11 months imprisonment.

Non-parole period

15. As for the **non-parole period**, based on section 18 of the Sentencing and Penalties Act 2009

including the Supreme Court decision in Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019), I have decided to fix a non-parole period of 14 years imprisonment.

CONCLUSION

Sentence

16. **Setareki Tuisawa** stands convicted of the 3 counts of *Rape* in the Amended Information by the Director of Public Prosecutions dated 15 September 2023 and filed on 21 September 2023, and hereby sentenced to an aggregate imprisonment term of **15 years 11 months, with the non-parole period of 14 years imprisonment.**

Permanent DVRO, standard non-molestation, non-contact orders

17. In addition to the imprisonment sentence, pursuant to the Domestic Violence Act 2009, I hereby issue a *Permanent Domestic Violence Restraining Order* [s.22] with the standard non-molestation conditions [s.27] including a non-contact order [s.29] against **Setareki Tuisawa**, and the protected party being the complainant NUR.

18. Thirty (30) days to appeal to the Fiji Court of Appeal.



.....
Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

7 May 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused