

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

**Criminal Case No. HAC 329 of 2023**

**State vs Pandit David Maharaj**

For the State:	Ms. U. Ratukalou and Mr. L Tuivuya
For the Accused:	Ms. N. Pratap
Date of Judgment:	25 <sup>th</sup> April 2025
Date of Sentence:	24 <sup>th</sup> July 2025

**SENTENCE**

1. The complainant in this case has been granted name suppression and henceforth will be known by the initials TFSN. No other identifying material shall be reported in any publications of this sentence.
2. The Accused appeared in answer to the following Information filed on the 26<sup>th</sup> November 2023.

**INFORMATION BY THE**  
**DIRECTOR OF PUBLIC PROSECUTION**

**PANDIT DAVID MAHARAJ is charged with the following offences:**

[COUNT 1]

*Statement of Offence*

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

*Particulars of Offence*

**PANDIT DAVID MAHARAJ** on the 16<sup>th</sup> day of October 2023 at Namaqumaqua Serua, in the Central Division penetrated the vagina of **TFSN** with his tongue without her consent.

[COUNT 2]

*Statement of Offence*

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

*Particulars of Offence*

**PANDIT DAVID MAHARAJ** on the same occasion as in Count 1, penetrated the vagina of **TFSN** with is fingers without her consent.

[COUNT 3]

*Statement of Offence*

**SEXUAL ASSAULT**: Contrary to section 210 (1) and (2) (a) of the Crimes Act 2009

*Particulars of Offence*

**PANDIT DAVID MAHARAJ** on the same occasion as in Count 1, unlawfully and indecently assaulted **TFSN** by sucking her breast.

[COUNT 4]

*Statement of Offence*

**PORNOGRAPHIC ACTIVITIES INVOLVING JUVENILES**: Contrary to section 62A (1) (b) of the Juveniles (Amendment) Act 1997

*Particulars of Offence*

**PANDIT DAVID MAHARAJ** on the same occasion as in Count 1, in private, recorded pornographic activities directly involving a juvenile namely **TFSN**.

[COUNT5]

*Statement of Offence*

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

*Particulars of Offence*

**PANDIT DAVID MAHARAJ** on the 16<sup>th</sup> day of October 2023 at Namaqumaqua, Serua, Navua in the Central Division on an occasion other than in Count1, penetrated the vagina of **TFSN** with his tongue without her consent.

[COUNT 6]

*Statement of Offence*

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

*Particulars of Offence*

**PANDIT DAVID MAHARAJ** on the 16<sup>th</sup> day of October 2023, at Namaqumaqua, Serua, Navua in the Central Division on an occasion other than in Count 2, penetrated the vagina of **TFSN** with his tongue without her consent.

3. After Trial he was convicted of 2 counts of Rape contrary to section 207 of the Crimes Act, for count 3 he was acquitted of Sexual Assault and convicted for the lesser offence of Indecent Assault contrary to section 212 of the Crimes Act and he is also convicted of the offence of Pornographic Activities Involving Juveniles contrary to section 62A of the Juveniles Act.

Mitigation

4. The Accused, through counsel, offered the following plea in mitigation: -
  - a) He is 71 years of age, married with 7 adult children.
  - b) Prior to being remanded he worked as a general handyman and electrician.

- c) He used to earn \$100 to \$150 per week and he was financially supporting his wife.
- d) He maintains that he did not rape the victim and he never took nude photos of her
- e) He has spent time in remand and this period should be deducted as time already served.
- f) The Accused relies on the following cases – State vs Koroi [2019] FJHC 243; State vs Khan [2018] FJHC 1136; and Tunaserau vs State [2024] FJCA 99; AAU 169 of 2019)30 May 2024).
- g) The Accused respectfully submits that the Court should take into consideration the above mitigating factors when passing sentence on the Accused.

### Sentencing recommendations

5. 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. For the offence of Indecent Assault, the maximum penalty is 5 years imprisonment and the accepted tariff ranges between 12 months to 4 years imprisonment (Rokota vs State Criminal Appeal HAA 68 of 2002).
- d. For the offence of Pornographic Activity Involving Juvenile attracts a maximum fine of \$25, 000 or a term of imprisonment not exceeding 14 years, or both. No tariff has been developed yet
- e. The State offers the following as aggravating factors –
  - breach of trust as the Accused was a person trusted by the family and he breached that trust.
  - 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.
- h. 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.
- i. The State confirms that the Accused has 3 current convictions from 2017.
- j. For this case he was remanded from 20 October 2023 to date therefore he has spent approximately 1 year 9 months in custody.

- k. 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 children, especially young girls from sexual exploitation in Fiji.

### Analysi

6. The offence of Rape attracts a maximum sentence of life imprisonment and the victim in this case is a child.
- 7.. 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.
8. 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) wether 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.”

9 The maximum penalty for Indecent Assault is 5 years imprisonment and the tariff ranges from 12 months to 4 years imprisonment as set by the case of Rokota vs State Criminal Appeal No. HAA 68 of 2002).

10. For the offence of Pornographic Activity Involving Juveniles for a first offence, the maximum fine is \$25, 000 or a term of imprisonment not exceeding 14 years or both.

11. There is currently no set tariff for this offence, however it was discussed in the case of State vs Koronibau [2019] FJHC 1176; HAC 173 of 2015 (28 November 2019), where the Court canvassed the jurisprudence from other jurisdictions as follows: -

*“17 The learned State Counsel invited this court to consider the UK Sentencing Guidelines in respect of the 4<sup>th</sup> Count. This court places its gratitude on record for the extensive research done by the learned State Counsel which was of immense help to structure a sentence for the offence of pornographic activity involving juveniles in this case.*

12. Section 1 of the Protection of Children Act 1978 of United Kingdom carries an offence similar to Section 62A of the Juveniles Act in Fiji. The punishment for the offence is stated in Section 6 of the Protection of Children Act of UK and it prescribes an imprisonment of ten years or a fine or both. Also, Section 160 of the Criminal Justice Act 1988 sets out an offence for possession of indecent photograph of child, where the maximum punishment is 5 years imprisonment or a fine or both.

13. Although the maximum punishment prescribed for the corresponding offences in Fiji is considerably higher than that of UK, it would be useful to examine the sentencing guidelines in UK for the purpose of sentencing in this case.

14. UK Sentencing Council has divided the offences involving indecent or pornographic material of children into three categories as follows;

	<b>Possession</b>	<b>Distribution</b>	<b>Production</b>
<b>Category A</b>	Possession of images involving penetrative sexual activity. Possession of images involving sexual activity with an animal or sadism.	Sharing images involving penetrative sexual activity. Sharing images involving sexual activity with an animal or sadism.	Creating images involving penetrative sexual activity. Creating images involving sexual activity with an animal or sadism.
<b>Category B</b>	Possession of images involving non-penetrative sexual activity.	Sharing of images involving non-penetrative sexual activity.	Creating images involving non-penetrative sexual activity.
<b>Category C</b>	Possession of other indecent images not falling within categories A or B.	Sharing of other indecent images not falling within categories A or B.	Creating other indecent images not falling within categories A or B.

15. Once the category of the offence is determined the UK Sentencing Council proposes the following starting points and sentencing ranges to be applied when sentencing;

	<b>Possession</b>	<b>Distribution</b>	<b>Production</b>
<b>Category A</b>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26weeks' – 3 years' custody</p>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 – 5 years' custody</p>	<p><b>Starting point</b> 6 years' custody</p> <p><b>Category range</b> 4-9 years' custody</p>
<b>Category B</b>	<p><b>Starting point</b> 26weeks' custody</p> <p><b>Category range</b> High level community order – 18 months' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks' – 2year's custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 1 – 4 years' custody</p>
<b>Category C</b>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Medium level community order – 26 weeks' custody</p>	<p><b>Starting point</b> 13 weeks' custody</p> <p><b>Category range</b> High level community order – 26 weeks' custody</p>	<p><b>Starting point</b> 18 months' custody</p> <p><b>Category range</b> 1- 3 years' custody</p>

16. Although the aforementioned guidelines are not definitive guidelines for Fiji, it would be worthwhile to be guided by this approach, as far as practical, to achieve uniformity in sentencing for this particular offence. As per the fourth count in this case you are convicted for participating in a video recording of pornographic activities involving a juvenile. In view of the above UK sentencing guidelines this offence falls within the category “A” where it prescribes a starting point of 6 years and a sentence range of 4-9 years. However, it should be borne in mind that the maximum punishment for this offence is 14 years imprisonment in Fiji, whereas it is 10 years in UK.
17. The courts in Fiji will have to set an appropriate tariff in time to come after carefully considering more cases, prevalence of similar offences, pattern of offending in this jurisdiction, deterrence and other important factors. In the meantime, I decide to adopt the UK sentencing guidelines to tailor an appropriate sentence in respect of the fourth count.
18. Further the State has drawn the attention of this court to the English guideline judgment of *R. v Oliver & Ors*, [2002] EWCA Crim 2766 (21 November 2002). It sheds light to identify aggravating factors in pornographic activities involving juveniles. Paragraph 20 of *R. v Oliver & Ors* sets out the following factors which are capable of aggravating seriousness of a particular offence;
19. If the images have been shown or distributed to a child.
20. If there are a large number of images. It is impossible to specify precision as to numbers. Sentencers must make their own assessment of whether the numbers are small or large. Regard must be had to the principles presently applying by virtue of *R v Canavan, Kidd and Shaw* [1997] EWCA Crim 1773; (1998) 1 Cr App R 79.
- (iii) The way in which a collection of images is organized on a computer may indicate a more or less sophisticated approach on the part of the offender to trading, or a higher

level of personal interest in the material. An offence will be less serious if images have been viewed but not stored.

- (iv) Images posted on a public area of the internet or distributed in a way making it more likely they will be found accidentally by computer users not looking for pornographic material, will aggravate the seriousness of the offence.
  - (v) The offence will be aggravated if the offender was responsible for the original production of the images, particularly if the child or children involved were members of the offender's own family, or were drawn from particularly vulnerable groups, such as those who have left or have been taken from their home or normal environment, whether for the purposes of exploitation or otherwise, or if the offender has abused a position of trust, as in the case of a teacher, friend of the family, social worker, or youth group leader.
  - (vi) The age of the children involved may be an aggravating feature. In many cases it will be difficult to quantify the effect of age by reference to the impact on the child. But in some cases that impact may be apparent. For example, assaults on babies or very young children attract a particular repugnance and may, by the conduct depicted in the image, indicate the likelihood of physical injury to the private parts of the victim. Some conduct may manifestly (that is to say, apparently from the image) have induced fear or distress in the victim, and some conduct which might not cause fear or distress to an adolescent child, might cause fear or distress to a child of, say, 6 or 7."
21. I note that you maintain that you did not do any of these things to the victim and maintain your innocence. This aggravates the offending as it indicates a lack of remorse on your part.
  22. The other aggravating factors include the vast age difference, the breach of trust and the continuing effects on the victim as she is the subject of gossip and ridicule in the village.
  23. There are no mitigating factors as you have current previous convictions.
  24. You have been remanded for 1 year 9 months, and this period shall be deducted as time already served.
  25. In sentencing you the Court notes that the offending did not appear to be premeditated, rather it appeared to be opportunistic, and you formulated the plan that same morning. Your actions were serious and predatory and requires a condign sentence that focusses on the sentencing principle of deterrence over any other considerations.
  26. For the offence of Rape, I adopt a starting point of 11 years' imprisonment, and I add 2 years for the aggravating factors identified above. The two counts of Rape will be served concurrently, a total sentence of 13 years' imprisonment for counts 1 and 2.


- 27, For the offence of Indecent Assault, I adopt a starting point of 4 months imprisonment, and I add 2 months for the aggravating factors. Your sentence for Count 3 is 6 months' imprisonment, to be served concurrently with the other counts in the Information.
28. For the offence of Pornographic Activity Involving Juveniles, I adopt the UK Sentencing Council guidelines, and I find that the offending in this case falls into Category B. I adopt a starting point of 6 months imprisonment, and I add 2 months for the aggravating factors set out above, a sentence of 8 months' imprisonment to be served concurrently with the other counts in the Information.
29. Pandit David Maharaj your total sentence of imprisonment is 13 years and from this I deduct 1 year 9 months for the time that you have already served in remand, leaving you with a final sentence of 11 years 3 months' imprisonment.
30. Pursuant to section 18 of the Sentencing and Penalties Act 2009, I fix a non-parole period of 10 years 3 months.

**Pandit David Maharaj this is your sentence: -**

1. For counts 1 and 2 of Rape, you are sentenced to 11 years 3 months' imprisonment, to be served concurrently.
2. For count 3 Indecent Assault I sentence you to 6 months' imprisonment, to be served concurrently to the other counts in the Information.
3. For count 4 Pornographic Activities Involving Juveniles I sentence you to 8 months imprisonment to be served concurrently with the other counts in the Information.
4. You will serve a total of 11 years 3 months imprisonment, and I fix a non-parole period of 10 years 3 months.

**30 days to appeal**



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

cc Office of the Director of Public Prosecutions  
Legal Aid Commission