

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 140 of 2022

STATE

V

KALISAVANI NAILOLO

Counsel : Mr. J. Nasa for the State.
: Mr. F. Singh and Ms. F. Kasa for the Accused.

Dates of Hearing : 25, 26, 27 August, 2025
Closing Speeches : 29 August, 2025
Date of Judgment : 02 September, 2025
Date of Sentence : 19 September, 2025

SENTENCE

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

1. In a judgment delivered on 2nd September 2025, this court found the accused guilty of two counts of rape and convicted him accordingly. The accused was, however, acquitted of one count of rape.
2. The brief facts were as follows:

- a). The victim is the stepdaughter of the accused. Both were residing at a settlement in Nadi. The victim was 13 years old at the time of the allegations.
- b). On 9th July 2022, the accused had an argument with the victim's mother at around midday. Following the argument, the victim's mother packed her belongings and left the house with the victim's siblings, leaving the victim behind.
- c). At around 2.30 pm, the victim was in her bedroom with the door closed. The accused knocked on the door and subsequently entered. The victim observed that the accused appeared to be intoxicated. Upon entering, he began to touch her inappropriately.
- d). The accused pushed the victim onto the mattress that was placed on the floor. The victim fell on her back, the accused forcefully removed the victim's clothing and continued to touch her.
- e). This was the first time the victim had experienced such a conduct. She was fearful, as she understood that what the accused was doing to her was wrong. At that moment, the victim began to cry. The accused then removed his own pants and forcefully penetrated his penis into her vagina.
- f). On Sunday evening, 28th August 2022, the victim was preparing to attend church with her mother and siblings. However, she had forgotten to complete certain household chores, which angered her mother. As a result, her mother told her to stay at home and complete the tasks.

- g). After her mother and siblings left for church, the victim began cleaning the sitting room. After a short while, the accused came home. Upon learning that the victim was alone, the accused grabbed her right hand and forcefully dragged her into her bedroom. The victim attempted to resist, but was unsuccessful.
 - h). Once inside the bedroom, the accused began touching the victim's body, laid her on the mattress facing upward, and continued to touch and undress her. The victim was crying when the accused was doing this. The accused removed his pants and forcefully penetrated his penis into her vagina. The victim attempted to turn her body, but was unable to do so due to the accused's weight. The victim did not consent to any of the accused's actions.
 - i). The victim informed her mother, but her mother did not believe her. On 2nd September 2022, the victim informed her school teachers about what the accused had been doing to her. The matter was reported to the police, the accused was arrested, caution interviewed and charged.
3. The state counsel filed written sentence submissions and victim impact statement whereas the defence counsel filed mitigation for which this court is grateful.
4. The following personal details and mitigation was submitted by the counsel for the accused:
 - a) The accused is now 38 years old;
 - b) First offender;
 - c) Is married and has 6 children;
 - d) Is a Tradesman, was earning \$550.00 per week ;

- e) Sole bread winner of the family;
 - f) Cooperated with police;
 - g) Promises not to reoffend;
 - h) Has every chance to rehabilitate and reform himself.
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 in this case:

a) Breach of Trust

The victim and the accused knew each other, the accused is the step father of the victim. They were living under the same roof, the accused grossly breached the trust of the victim by his actions. The accused owed a duty of care and responsibility towards the victim but he did not live up to this responsibility by his actions.

b) Victim was vulnerable

The victim was vulnerable, alone and unsuspecting the accused took advantage of the situation and sexually abused the victim in his house. The accused overpowered the helpless victim. The accused was bold and undeterred in what he did to the victim.

c) Age difference

The victim was 13 years whereas the accused was 34 years of age at the time of the offending. The accused was a mature adult who should have known better. The age difference is substantial.

d) Prevalence of the offending

There has been an increase in sexual offence cases on juvenile victims by mature adults known to the victim. The accused being the mature of the two did not give a second thought about what he was doing to the victim.

e) Breach of sanctity of the relationship

The accused breached the sanctity of the relationship that existed between him and the victim.

f) Safety at home

The victim was supposed to be safe at home. This was not to be due to the actions of the accused.

g) Victim Impact Statement

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

- (i) After the incident has lost normalcy in life;
- (ii) Gets flashback of what the accused did;
- (iii) Keeps away from boys;
- (iv) Lost concentration in school work;
- (v) Feels scared at all times;
- (vi) Got separated from her mum.

TARIFF

7. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in the judgment of *Gordon Aitcheson vs. the State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.
8. 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.”
9. I am satisfied that the two offences of rape for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act, I prefer to impose an aggregate sentence of imprisonment.
10. Bearing in mind, the objective seriousness of the offences committed I take 11 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. The sentence is increased by 3 years for the aggravating factors. The interim sentence is now 14 years imprisonment. The sentence is reduced for mitigation, it is noted that the accused is a first offender hence a person of good character.
11. The personal circumstances and family background of the accused has little mitigatory value, however, his good character has substantive

mitigating value. The sentence is reduced by 1 year to reflect good character and other mitigation. The sentence is now 13 years imprisonment.

12. I note from the court file the accused was remanded for 4 months and 7 days. In exercise of my discretion I reduce the sentence by 4 months and 10 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final aggregate sentence for two counts of rape is 12 years, 7 months and 20 days imprisonment.
13. This court is satisfied that the term of 12 years, 7 months and 20 days imprisonment 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 offence.
14. It is the duty of the court to protect children from sexual abuse or exploitation of any kind. This is precisely why the law prescribes life imprisonment as the maximum penalty for the offence of rape.
15. There has been an alarming increase in sexual offences involving offenders who are known to the victim and are mature adults.
16. The rape of a child is among the most serious forms of sexual violence. Offenders who commit such acts must be dealt with severely. Children are entitled to live their lives free from any form of physical or emotional abuse. When an offender sexually abuses a child, he or she must expect condign punishment, reflecting society's outrage and denunciation of such conduct. In such circumstances, a lengthy term of imprisonment becomes inevitable.

17. The Supreme Court in *Mohammed Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) has stated the above in the following words at paragraph 54 that:

*“It is useful to refer to the observation expressed by the Fiji Court of Appeal in *Matasavui v State*; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”*”

18. Madigan J in *State v Mario Tauvoli* HAC 027 of 2011 (18 April, 2011) said:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

19. The Supreme Court in *Felix Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015) mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

- (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 pre sent;*
- (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.*

20. Mr. Naiolo, you appear before this Court for sentence in relation to serious offences committed against your stepdaughter, a child who was unsuspecting, alone, and vulnerable. Your conduct represent a gross breach of trust and a profound violation of the victim's dignity and safety.

21. The offending involved a sustained abuse of power and authority over a child who relied on you for protection and care. Instead, you exploited her vulnerability for your own sexual gratification. As I see, the impact of sexual abuse on the victim is deep and enduring. It affects not only her emotional and psychological development but also her ability to trust, to feel safe, and to form healthy relationships. The victim in this case has suffered significant harm, and the consequences of your actions will likely remain with her for many years.
22. Your conduct was unthinkable and deplorable. As a mature adult, you ought to have known better. You had every opportunity to act responsibly and to safeguard the wellbeing of the victim in your care. Instead, you chose to violate her, furthermore, this court cannot ignore the fact that the victim was so depressed at one stage of your conduct that she wanted to commit suicide.
23. The court must denounce such conduct in the strongest possible terms. The community expects that children will be protected from harm, especially by those entrusted with their care. Your actions have undermined that trust and caused irreparable harm to the innocent victim.
24. Having considered section 4 (1) of the Sentencing and Penalties Act, and the serious nature of the offences committed on the victim your stepdaughter of 13 years compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case, and to deter offenders and other persons from committing offences of the same or similar nature.
25. Under section 18 (1) of the Sentencing and Penalties Act (as amended), I impose 11 years imprisonment as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be

appropriate in the rehabilitation of the accused and to meet community expectations which is just in all the circumstances of this case.

26. 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.

27. 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.

28. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for two counts of rape is 12 years, 7 months and 20 days imprisonment with a non-parole period of 11 years to be served before the accused is eligible for parole.
29. Considering the closeness of the relationship between the victim and the accused a permanent non-molestation and non-contact orders are issued forthwith for the protection of the victim.
30. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka

19 September, 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.