

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 035 OF 2024

STATE

v

AFROZ SHAH

Counsel : Mr J. Nasa for State
Mr J.K. Singh for Defence

Date of Judgment : 06 November 2025

Dates of submissions : 18 November 2025

Date of Sentence: : 28 November 2025

(The name of the Complainant is suppressed. He is referred to as RM)

SENTENCE

1. Afroz Shah, after a contested trial, you stand convicted of two counts of Rape and two counts of Criminal Intimidation on the following information filed by the Director of Public Prosecutions:

FIRST COUNT

[Representative Count]

Statement of Offence

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

Particulars of Offence

AFROZ SHAH between the 01st day of September, 2020 and the 30th day of May, 2021 at Sigatoka in the Western Division, had carnal knowledge of RM, without his consent.

SECOND COUNT

[Representative Count]

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

AFROZ SHAH between the 01st day of September, 2020 and 30th day of May, 2021 at Sigatoka in the Western Division, penetrated the mouth of RM with his penis, without his consent.

THIRD COUNT

[Representative Count]

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (1) (a) (i) and (ii) of the Crimes Act 2009.

Particulars of Offence

AFROZ SHAH on the 01st day of September, 2020 and the 30th day of May 2021, at Sigatoka in the Western Division, without a lawful excuse, criminally intimidated RM with threat to cause harm to the reputation of the said RM.

FOURTH COUNT

[Representative Count]

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (2) (a) of the Crimes Act 2009.

Particulars of Offence

AFROZ SHAH on the 01st day of September, 2020 and the 30th day of May 2021, at Sigatoka in the Western Division, without a lawful excuse, criminally intimidated RM with threat to kill the said RM.

2. The victim was a child aged 13 years at the time of the offence. For study purpose, he moved to his auntie's place in Korotogo from where he continued schooling. The victim is your nephew (sister-in-law's nephew). You resided in the same house as the victim and shared your room with him. In September 2020, you took a video of the victim bathing naked and showed it the victim to blackmail him. You threatened to post the video on social media if the victim failed to follow your instructions.
3. You told the victim to put soap on his penis and masturbate. The victim followed your instructions because he was terrified. You showed the video of victim masturbating and threatened to post it on social media. You also threatened to kill the victim if he failed to follow your instructions. The victim was terrified and ashamed. By instilling fear in the victim, you penetrated the anus of the victim with your penis when he submitted to your lustful demands. Using the same fear tactics, you repeated the same sexual activity on several occasions.
4. The victim was naïve and susceptible to your demands. By putting the victim in fear of blackmail, you repeatedly penetrated the mouth of the victim with your penis. The same sexual assaults recurred two to three times a week.
5. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years' imprisonment¹.
6. The maximum sentence for Criminal Intimidation under Section 375 (1)(a)(i) and (ii) of the Crimes Act 2009 (Count 3) is 5 years' imprisonment. The maximum sentence for Criminal Intimidation under Section 375(2)(a) of the Crimes Act 2009 is 10 years' imprisonment. The existing tariff for this offence would range from 12 months to 4 years' imprisonment².
7. According to Section 17 of the Sentencing and Penalties Act 2009, 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 has the discretion to impose an aggregate sentence

¹ *Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)*

² *State v (Anasa) Baleinabodua [2012] FJHC 981 (21 March 2012)*

of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for all the offences you have committed.

8. In selecting your sentence, I must regard the proportionality principle enshrined in the Constitution, Section 4 of the Sentencing and Penalties Act 2009 (SPA), the maximum penalty prescribed for the offence, the current sentencing practice and the sentencing guidelines issued by the courts. I would select the starting point considering the seriousness of the offence and the harm caused to the victim. The final sentence will be determined after making appropriate adjustments for the aggravating and the mitigating factors.
9. Sexual offences against children are prevalent and on the rise in Fiji. The courts in Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The children are entitled to live their lives free from any form of physical or emotional abuse. Child rape is widely considered as one of the worst possible offenses, arguably second only to murder. Harsh sentences serve as an expression of a society's profound moral outrage and demand that the offender "get what they deserve". The children in a domestic setting must be protected. The increasing prevalence of this offence in our community calls for deterrent sentences. The main purpose of your punishment is to condemn your action and to protect the children of our society.
10. Having taken into consideration the seriousness of the offences and the harm caused to the victim, I select a starting point of 11 years for the aggregate sentence.
11. Based on Ram³ guidelines, I identify the following aggravating and mitigation factors:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. At the time of the offence, you were 22 years old, and the victim was 13 years of age.

³ [2015] FJSC 26 (23 October 2015)

- (b). The victim was naïve and susceptible. You exploited the vulnerability of a child when he came to reside in your house for study purposes.
- (c). You were the uncle of the victim. He shared your room in the belief that you would protect and look after him. You betrayed that trust.
- (d). The offence was repetitive and recurrent.
- (e). The offence involved a degree of premeditation and sophistication.

Mitigating Factors:

- (a). In mitigation, your Counsel informed that you are 27-years of age and unmarried. You are a salesman by profession earning \$150 a week. As the sole breadwinner of your family, you look after your sickly elderly mother. Personal circumstances however are of little mitigatory value.
- (b). You are a young and first offender. You have maintained a clear record thus far.

12. I add 02 years and 03 months to the starting point of 11 years for above mentioned list of aggravating factors to arrive at an interim sentence of 13 years and 03 months' imprisonment. I reduce 1 year for mitigating factors to arrive at an aggregate sentence of 12 years and 03 months imprisonment.
13. According to the State, you had been in remand for approximately 03 months before trial. The remand period is deducted from your sentence to arrive at a final aggregate sentence of 12 years' imprisonment.
14. You are a young first offender. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 08 years to facilitate rehabilitation.

15. Summary

Afroz Shah, you are sentenced to an aggregate imprisonment term of 12 years with a non-parole period of 08 years. You are eligible for parole when you have served 08 years in the correction facility.

16. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge
Judge

28 November 2025

At Lautoka

Counsel:

- Office of the Director of Public Prosecution for State
- JK Singh Lawyers for Defence