

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

**CRIMINAL CASE NO: HAC 092 of 2023**

**STATE**

**V**

**MOHAMMED FERUZ KHAN & TARAI HARRY BIANEKE**

**Counsel: Mr. Nasa for the State**  
**Ms. Terubea & Ms. Reddy for the Accused 1 & 2**

**Dates of Trial:** 3<sup>rd</sup> to 10<sup>th</sup> December 2025

**Judgment:** 6<sup>th</sup> February 2026

**Sentence Hearing:** 23<sup>rd</sup> February 2026

**Sentence:** 26<sup>th</sup> February 2026

**SENTENCE**

***The name of the victim is suppressed. Accordingly, the victim will be referred to as "RT".***

1. In a judgment delivered on 6<sup>th</sup> February, 2026 this court found the accused Mohammed Feroz Khan guilty of one count of Rape, one count of Sexual Assault and one count of Attempted Rape. The second accused Tarai Harry Bianeke was found guilty of three counts of aiding and abetting Rape, Sexual Assault and Attempted Rape. Both accused person were convicted accordingly for the said offences.
2. The following facts was proven by prosecution during the trial beyond reasonable doubt.
3. The victim between 1<sup>st</sup> January 2022 and 31<sup>st</sup> December 2022 was 11 years of age a student who resides with her mother and stepfather at Tawatawa village in Lautoka.

4. On the first incident sometimes between 1<sup>st</sup> January, 2022 and 31<sup>st</sup> December 2022 the victim was spending the weekend at accused family's residence at Tawatawa village when the first accused Mohammed Feroz penetrated the mouth of "RT" with his penis a child below the age of 13 years.
5. Hence, the first incident the second accused had aided and abetted the first accused to penetrate the mouth of "RT" a child below the age of 13 years with his penis.
6. On the second incident sometimes between 1<sup>st</sup> January, 2022 and 31<sup>st</sup> December 2022 the victim whilst playing a game of hide and seek with the two accused and her one Ramiza had teamed up with the Mohammed Feroz Khan who took her into the bush at Tawatawa removed her clothes including her bra and suck her breast.
7. Thus the second incident was arranged and organized by the second accused so that the victim was to partner the 1<sup>st</sup> accused and therefore commit such offences of sexual assault on the victim.
8. The third incident happened sometimes between the 1<sup>st</sup> of January and the 31<sup>st</sup> of December 2022 whilst the victim was at the house of accused persons in the evening the 1<sup>st</sup> accused Mohammed Feroz khan had attempted to penetrate his penis into the anus of the victim but was unsuccessful.
9. The third incident happened after the second accused told the victim to go into the bedroom where the 1<sup>st</sup> accused is waiting for her behind the curtain inside the house. Prior to this incident the second accused was seen conversing with the 1<sup>st</sup> accused in the afternoon therefore she was aiding and abetting the 1<sup>st</sup> accuse to attempt to commit the sexual offence on the victim.
10. Prior to the commission of each of the three offences by the first accused hence it was the second accused who was encouraging the victim to submit to the sexual request's made by the first accused on each of his sexual encounter with victim.
11. The second accused was also seen colluding with the 1<sup>st</sup> accused earlier I the afternoon before had told the victim to go the 1<sup>st</sup> accused who was waiting behind the curtain inside the living room.
12. The victim did not inform her mother of what was done to her during these three incidents because she did her trust her as she failed to report to Police the earlier incident when her stepfather had sexually abused her.

13. The victim later reported the matter to her aunty (father sister) who then took the victim and reported to the Police. Investigations were conducted and the both accused were located and arrested, interviewed under caution and both were charged accordingly. The first accused was charged with one count of Rape, one count of sexual assault and one count of Attempted Rape. The second accused was charged with 3 counts of aiding and abetting.
14. The State Counsel filed written sentence submissions and the defence counsel filed.
15. The accused Mohammed Feroz khan was 22 years old at the time of the offending; First offender; in a defacto relationship and resides with his family which includes his elderly father and his sister at Drasa Lautoka He is employed as a farmer at a Chinese operated farm in Drasa.

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.

16. Hence the court also noted that there was no Victim Impact Statement filed by the Prosecution.
17. Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) *the only purposes for which sentencing may be imposed by a court are-*

*(a) To punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

18. I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

I will first deal with the one (1) count of Rape that you have been found guilty and convicted, in terms of Section 207 (1) & (2) (c) of the Crimes Act No. 44 of 2009. The offence of Rape in terms of Section 207(1) of the Crimes Act carries a maximum penalty of imprisonment for life.

19. This has been affirmed by the Supreme Court in ***Alfaaz v. State*** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held: “According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders.”
20. In the case of ***Anand Abhay Raj v. The State*** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.
21. However, in the case of ***Aitcheson v State*** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*“The tariff previously set in ***Raj v The State*** [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> 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.”*

### **Starting Point**

22. In determining the starting point within the said tariff, the Court of Appeal, in ***Laisiasa Koroivuki v. State*** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff.”*

*If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

23. In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, **I commence your sentence at 12 years imprisonment** for the offence of rape. The victim is your defacto partner's niece and there is a certain degree of trust on you to ensure her safety. You have breached the said trust by instead of protecting and ensuring the safety of the victim whilst having her as a visitor to your home you have breached that trust and taken up those horrendous acts of Rape against her. There was a disparity in age between you and the victim. The victim was 11 years where as your age was 22 years. There was an age gap of 11 years between you and victim. The age difference is also substantial.
- (i) You took advantage of the victim's vulnerability, helplessness and naivety.
  - (ii) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the victim of her innocence.
  - (iii) I find that there was a degree of planning and premeditation on your part in committing these offences. You had committed these offences on the victim after colluding with your defacto partner at a time you found her alone.
  - (iv) The victim has been emotionally and psychologically traumatized.
  - (v) You are now convicted of multiple offending.
24. Considering the aforementioned aggravating factors, I increase your sentence by 4 years. Now your sentence is 16 years imprisonment for the count of Rape.
25. Mohammed Feroz Khan you are now 24 years of age. You are in a defacto partnership with accused 2 Tarai Harry Bianeke when the offences were committed. You reside at Drasa, Lautoka with your elderly father and sister. You are sole bread winner of your family. It is submitted that you are employed as a farmer at a Chinese operated farm in Drasa, Lautoka.
26. Unfortunately, the above are all personal circumstances and cannot be considered as mitigating circumstances.
27. As per the Antecedent Report filed, it is noted that you are a first offender. Therefore, Court considers you as a person of previous good character
28. Your Counsel has submitted that you are now remorseful of your actions. However, this Court cannot consider your belated show of remorse as genuine.
29. I accept that you are a person of previous good character. Accordingly, considering the aforesaid mitigating factor I reduce 1 year from your sentence. Now your sentence will be 15 years imprisonment for the count of Rape.

30. Mohammed Feroz Khan you are also convicted on one count of attempted Rape. The offence carries a maximum sentence of 10 years imprisonment. I have decided to impose a sentence of 6 years imprisonment for Attempted Rape.
31. Hence, you are also found guilty and convicted of one count of Sexual Assault pursuant of Section 210 (1) (a) of the Crimes Act.
32. The offence of Sexual Assault in terms of Section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.
33. In the cases of ***State v. Abdul Khaiyum*** [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012); and *State v. Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.
34. It was held in *State v. Laca* (supra) “The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.”
35. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

**Category 1** (the most serious)

Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim

**Category 2**

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;
- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

**Category 3**

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).”

36. In this case, as per count 2 it has been proved that you unlawfully and indecently assaulted the complainant, by sucking the nipples of her breast

therefore, in my opinion, the offence for the should be categorized under category 3 above.

37. As such, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentences at 2 years imprisonment for the second count of Sexual Assault, in terms of Section 210 (1) (a) of the Crimes Act.
38. Considering the aggravating factors mentioned above, which are common for all offences, and the sole mitigating factor, which is your previous good character, I impose 5 years imprisonment for the second count of Sexual Assault.
39. In the circumstances, your sentences are as follows:
- Count 1- Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act – 14 years imprisonment
- Count 3 – Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 5 years imprisonment
- Count 5 – Attempted Rape contrary to Section 207 (1) and 2(a) of the Crimes Act – 6 years’ imprisonment.
40. Tarai Harry Bianeke is found guilty and convicted on one count each of Aiding and abetting the offences of Rape, Sexual Assault and Attempted Rape. For the aiding and abetting rape. I took starting point of 12 years imprisonment. I increase your sentence 3 years for the aggravating factor your sentence is 15 years imprisonment for your mitigation, I deduct 7 years for the same. Your sentence now stands at 8 years. Your sentence is below the tariff set in this country be facing but this court has done that because of the circumstances your child will find itself in after both parents are in custody.
41. Mohammed Feroz khan cannot be given the same consideration he is the person who has caused the actual harm. I am not at all condoning what you did to be less serious than what Mohammed Feroz Khan did but one of you needs to be given an opportunity to look after your child after being punished for the crime you have committed.
42. For the second count of Aiding and Abetting Sexual Assault I sentence you to 5 years and for the third count of Aiding and Abetting Attempted Rape I sentence you 6 years imprisonment.
43. Tarai Harry Bianeke, your sentences are as follows:
- Count 2- Aiding and Abetting Rape contrary to 45 and 207 (1) and (2) (a) of the Crimes Act – 8 years imprisonment.
- Count 4 – Sexual Assault contrary to Section 45 and 210 (1) (a) of the Crimes Act – 5 years imprisonment.

Count 6 – Attempted Rape contrary to Section 45 and 208 of the Crimes Act – 6 years’ imprisonment.

44. Accordingly, I order that both sentences of three counts each for Mohammed Feroz Khan and Tarai Harry Bianeke are to be served concurrently to each other. Mohammed Feroz Khan your total sentence to serve is 15 years imprisonment. Pursuant to Section 18 of the Sentencing and Penalties Act, 2009 I fix your non-parole period as 13 years’ imprisonment.

45. Tarai Harry Bianeke your total sentence is 8 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act , I fix a non-parole period of 7 years imprisonment

46. Section 24 of the Sentencing and Penalties Act reads thus:

*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*

47. For Mohammed Feroz Khan You were arrested in this case and produced in Nadi Magistrates Court on 20<sup>th</sup> of March 2023 and remanded into custody. You were granted bail on 25<sup>th</sup> of July 2023 in Lautoka High Court. YOU failed to turn up in Court on the 15<sup>th</sup> of October 2024 and a bench warrant was issued against you. You were arrested on the 15<sup>th</sup> of October 2025 and your bail was revoked and was remanded on the same day. You were kept in custody from the 25<sup>th</sup> of July 2025 till date 26<sup>th</sup> of February 2026. I hold that a period of 8 months should 14 days to be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

48. Your sentence is as follows:  
Head Sentence – 15 years imprisonment.  
Non-parole period - 13 years imprisonment.

Considering the time you have spent in remand for 8 months and 14 days the time remaining to be served is as follows:

Head Sentence – 14 years 3 months and 17 days imprisonment.  
Non-parole period – 12 years 3 months and 17 days imprisonment.

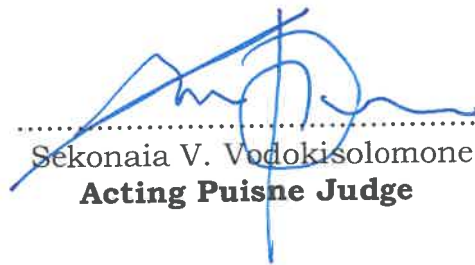
49. For Tarai Harry Bianeke. She was arrested and produce in the Magistrates Court on the 5<sup>th</sup> of June 2023 where she was remanded whilst matter was transferred to High Court. She was granted bail on the 11<sup>th</sup> of October 2023 bench warrant was again issued on 25<sup>th</sup> of July, 2025. You were kept in custody from the 25<sup>th</sup> of July 2025 till date 26<sup>th</sup> of February 2026 I hold that a period of 9 months and 5 days to be deducted as time already served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

Your Sentence is as follows;  
Head Sentence - 8 years  
Non-Parole Period - 6 years

Considering the time spent In Remand for 9 months and 6 days, the time remaining to be served is as follows;

Head Sentence - 7 years 2 months and 25 days  
Non-Parole Period - 5 years 2 months and 25 days

You both have 30 days to appeal to the Court of Appeal if you so wish.

  
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Sekonaia V. Vodokisolomone  
**Acting Puisne Judge**



**AT LAUTOKA,  
26<sup>th</sup> day of February 2026**

**Solicitors  
Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused persons**

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