

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 211 of 2024

STATE

v

SEPECA LABADAI

Counsel: Mr. J. Singh & Mr. U. Lal for the State
Mr. T. Duanasali & Ms. F. Ratu for the Accused

Date of Trial: 18 – 20 August 2025; 28 August – 3 October 2025 [NCTA]; 1, 2 &
11 December 2025

Date of Judgment: 30 January 2026

Date of Sentence Hearing: 13 February 2026

Date of Sentencing: 27 February 2026

SENTENCE

1. **Sepeca Labadai**, the Accused, was **acquitted** of *Rape* in Counts 1, 2 & 3, but **convicted** of Count 4: Sexual assault; Count 5: Attempt to commit rape; and Count 6: Indecently insulting or annoying any person, laid out as follows in the Information by the Acting Director of Public Prosecutions dated 30 August 2024 and filed on 2 September 2024:

Count 1

Statement of Offence

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

Particulars of Offence

SEPECA LABADAI sometimes between 1st January 2023 and 31st December 2023 at Nasinu in the Central Division penetrated the anus of **IOANE KOROIDIMOKO** with his finger, without his consent.

Count 2

Statement of Offence

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

Particulars of Offence

SEPECA LABADAI sometimes between 1st January 2023 and 31st December 2023 at Nasinu in the Central Division penetrated the anus of **IOANE KOROIDIMOKO** with his penis, without his consent.

Count 3

Statement of Offence

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

Particulars of Offence

SEPECA LABADAI sometimes between 1st January 2023 and 31st December 2023 at Nasinu in the Central Division penetrated the mouth of **IOANE KOROIDIMOKO** with his penis, without his consent.

Count 4

Statement of Offence

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

Particulars of Offence

SEPECA LABADAI sometimes between 1st January 2024 and 31st January 2024 at Nasinu in the Central Division unlawfully and indecently assaulted **SOKOIWASA MAWI** by rubbing his penis on his back on top of his clothes.

Count 5

Statement of Offence

ATTEMPT TO COMMIT RAPE: Contrary to section 208 of the Crimes Act 2009.

Particulars of Offence

SEPECA LABADAI sometimes between 1st April 2024 and 31st April 2024 at Nasinu in the Central Division attempted to penetrate the mouth of **SOKOIWASA MAWI** with his penis, without his consent.

Count 6

Statement of Offence

INDECENTLY INSULTING OR ANNOYING ANY PERSON: Contrary to section 213(1)(b) of the Crimes Act 2009.

Particulars of Offence

SEPECA LABADAI on an unknown date between 1st April 2024 and 30th June 2024 at Nasinu in the Central Division with intent to insult the modesty of **SOKOIWASA MAWI** intrudes upon his privacy by exposing his penis to **SOKOIWASA MAWI**, such actions likely to offend his modesty.

Brief facts for Counts 4, 5 & 6

2. The complainant PW1 Sokoiwasa Mawi Baleisawani, aged 22 years, is employed at Lyndhurst company situated at the tax-free zone in Valelevu, Nasinu, and reside at Vusuya, Nausori, since class 4 with his parents and siblings of three sisters and two brothers. At

Lyndhurst company, PW1 works at the greenhouse where they plant flowers and nurse plants, which they also sell to companies that they service in Suva. PW1 worked at Lyndhurst company in 2024 and resigned, but resumed work there again in April 2025. PW1 worked with the accused Sepeca Labadai *a.k.a* Peca who was based at the Landscaping section, and has known Sepeca Labadai since commencing work at the greenhouse in January 2024. While at work, Sepeca Labadai would at times attempt to get PW1's attention by biting his lower lip and fist, stare and smile at PW1 during tea break, signal PW1 at the nursery, and even call PW1, but PW1 would simply avoid Sepeca Labadai.

Count 4: Sexual assault

Sepeca Labadai continued signaling PW1, and sometime in January 2024, PW1 was inside a shipping container looking for a fitting for a pipe when Sepeca Labadai approached from behind and rubbed his penis, while still wearing his trousers, on PW1's back just below the hip and buttocks, and at the same time told PW1 to look at his erect and hard penis. PW1 immediately turned around to look at Sepeca Labadai, then exited the container without saying a word.

Count 5: Attempt to commit rape

On a Friday in April 2024, Sepeca Labadai asked PW1 to be dropped to Vusuya in his car, to which PW1 agreed. Inside that car driven by Sepeca Labadai, PW1 sat in the front passenger seat since the backseat was filled with three bags of clothes as is routine on Fridays when they would be given sewn clothe cuttings. Sepeca Labadai drove the car along the main highway to Nausori and close to Makoi, Sepeca Labadai began flirting with PW1 and told PW1 that his penis is erect and hard, and for PW1 to touch it and masturbate him. PW1 felt afraid and did not know what to do, but just sat there and looked away outside the car window. While driving, Sepeca Labadai was able to take off his pants just below his hip by pulling down his trousers with one hand while holding onto the steering wheel with the other hand, then switched hands in order to pull down the other pair of his pants. When his pants was down just below his hip, Sepeca Labadai then showed PW1 his erect penis, and forcibly pulled PW1's hand to touch his penis and masturbate him, and then forcibly pulled PW1's neck with his left hand to suck his penis while holding onto the steering wheel with his right hand. PW1

reacted by pushing Sepeca Labadai's left hand away and then looked outside the car window, but Sepeca Labadai kept forcing PW1 to masturbate him and suck his erect penis. PW1 did not suck Sepeca Labadai's penis at that moment despite Sepeca Labadai's insistence and force until they reached Nausori. On that particular Friday, PW1 had not at any earlier time indicated to Sepeca Labadai of wanting to suck his penis including when he got into the car with Sepeca Labadai and later disembarking in Nausori. PW1 did not agree to suck Sepeca Labadai's penis, and when he pushed Sepeca Labadai's hand away, Sepeca Labadai kept on saying to PW1 that his penis is erect. When Sepeca Labadai pulled PW1's neck and forced him to suck his penis, PW1 felt afraid and wanted to jump out of the car because that was the first time for someone to force him to engage in such lewd act.

Count 6: Indecently insulting or annoying any person

The toilet and bathroom facilities for males working in the greenhouse and factory are located behind the Lyndhurst factory. There are two separate toilets, however, one toilet has a shower adjacent to it, situated within a building. When one enters that building, there is an open space which is 2 meters in length and 1½ meters in breadth, and then there are the two separate doors leading to the toilets. In that open space is a sink, mirror and a window, and the two toilets have windows. If someone is using the toilet, the others usually wait in that open space. Sometime between April and June 2024, PW1 recalled being with Sepeca Labadai in that open space. When PW1 exited from the toilet after urinating, he then saw Sepeca Labadai standing alone in that open space naked with a towel around his neck. Sepeca Labadai then told PW1, "*How about this*", and looked down at his own penis, and PW1 was shocked and reacted by immediately exiting the main door. PW1 recalled that Sepeca Labadai had exposed his penis to him at around 4.15 pm that particular day, and once exiting that building, PW1 went directly to the nursery, grabbed his bag, and headed straight for the bus. According to PW1 this is the third or fourth time that Sepeca Labadai had exposed his penis to him. PW1 then shared what Sepeca Labadai had been doing to him to his manager. PW1 also sought advice from the lady counsellor of the company who may have also reported the matter to the police. PW1 then later went to the Valelevu police station to provide his statement in relation to the criminal complaints against Sepeca Labadai. Sepeca Labadai was subsequently arrested by the police, interviewed under caution and charged.

3. Given the facts substantiating Counts 4, 5 and 6, this Court is inclined to order an aggregate sentence of imprisonment pursuant to section 17 of the Sentencing and Penalties Act 2009 which state, *‘[i]f 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’*.

Count 4: Sexual assault sentence analysis

4. The maximum sentence for ***Sexual assault*** contrary to section 210(1)(a) of the Crimes Act 2009 is 10 years imprisonment.
5. The sentencing tariff for *Sexual assault* is 2 to 8 years imprisonment according to State v Vuli [2019] FJHC 1091; HAC205.2017 (12 November 2019) and at paragraphs 30 – 32, Hamza J held:

[30] The offence of Sexual Assault in terms of section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[31] 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.

[32] 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 range is for less serious assaults such as brushing of covered breasts or buttocks.”

“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)."

6. The **Sexual assault**, in this instant, falls within *Category 2(iii)* noted above, on that basis, I select a starting point of 2 years, and enhance it by 3 years for the **aggravating factors** that: (i) the 55 year old accused sexually assaulted a 22 year old young male complainant who had aspired to join the British Army; (ii) the accused deliberately pursued and approached PW1 when he was working alone inside the shipping container for purposes of sexually assaulting PW1; (iii) being the older and matured person, and longer employee at Lyndhurst company, the accused should have been an exemplary worker and trusted by the younger staff, however he breached that trust when sexually assaulting PW1; (iv) the accused totally disregarded the complainant's safety and wellbeing as an employee of Lyndhurst company, and by sexually assaulting PW1 had therefore inflicted emotional and psychological harm on PW1 who may need professional assistance such as counselling for purposes of recovering from such traumatic ordeal; and (iv) prevalence of young, vulnerable males being sexually assaulted at the work place.
7. The 5 years is reduced by 1 year for the **mitigating factors** that the accused is aged 55 years, no prior conviction, unemployed, has a 27 year old son and divorced for the past seven years, father is deceased and he is currently supporting his elderly mother who resides in Vanua Levu.
8. The **time spent in custody** of 4 months is further deducted from the 4 years resulting in the custodial term of 3 years 8 months for the *Sexual assault*.

Count 5: Attempt to commit rape sentence analysis

9. The maximum sentence for **Attempt to commit rape** contrary to section 208 of the Crimes Act 2009 is 10 years imprisonment.

10. The sentencing tariff for *Attempt to commit rape* is 12 months to 5 years imprisonment according to Kamikamica v State [2021] FJCA 261; AAU0033.2014 (3 June 2021) and at paragraphs [28] – [30], Prematilaka JA held:

[28] The next question is to decide the sentence to be imposed on the appellant on attempted rape.

*[29] Aunima v State [2001] FJLawRp 50; [2001] 1 FLR 213 (27 June 2001) had laid down the sentencing tariff for attempted rape as ranging from 12 months and to 05 years imprisonment under section 151 of the Penal Code where the offender was statutorily liable to imprisonment for seven years with or without corporal punishment. Currently attempted rape is set out in section 208 of the Crimes Act, 2009 where the maximum statutory sentence is imprisonment up to 10 years. **Despite the increase in the sentence for attempted rape under the Crimes Act, 2009 it appears that still the sentencing tariff for attempted rape is taken to be from 12 months and to 05 years of imprisonment.***

[30] It must be remembered that in Aunima v State (supra) the sentencing tariff for attempted rape was set to be from 12 months to 05 years in the context of the maximum sentence under section 151 of the Penal Code being 07 years and the victim appearing to have been as adult. ...

11. For the *Attempt to commit rape*, a custodial term of 3 years 8 months is also ordered, which is within the applicable sentencing tariff.

Count 6: Indecently insulting or annoying any person sentence analysis

12. The maximum sentence for *Indecently insulting or annoying any person* contrary to section 213(1)(b) of the Crimes Act 2009 is 1 year imprisonment.

13. In State v Abraan [2018] FJHC 1009; HAC142.2018 (17 October 20-18), at paragraphs 34 – 34, Sunil J held:

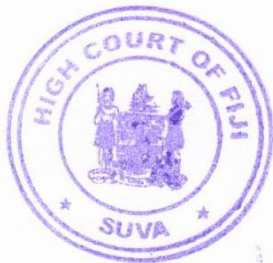
33. The maximum penalty for the offence of indecently insulting or annoying any person and common assault are 1 year imprisonment respectively.

34. There is no established tariff for the offences of indecently insulting or annoying any person and common assault. This is so in my judgment considering the differing circumstances in which such offences can be commission from less serious to more serious. The sentence will be at the discretion of the sentencing court.

14. For the *Indecently insulting or annoying any person*, a custodial term of 3 months is ordered, which imprisonment term is to be made concurrent to the aggregate custodial term of 3 years 8 months.
15. Given that the aggregate sentence in this instant is 3 years 8 months imprisonment, this Court does not have jurisdiction to suspend the said sentence pursuant to section 26(2)(a) of the Sentencing and Penalties Act 2009.
16. Pursuant to section 18(1) of the Sentencing and Penalties Act 2009, this Court fixes a non-parole period of 2 years to the aggregate custodial term of 3 years 8 months.

CONCLUSION

17. **Sepeca Labadai** stands convicted of Count 4: *Sexual assault*; Count 5: *Attempt to commit rape*; and Count 6: *Indecently insulting or annoying any person*, in the indictment, and hereby sentenced to an **aggregate custodial term of 3 years 8 months with the non-parole period of 2 years**.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.



Pita Bulamainaivalu

Hon. Mr. Justice Pita Bulamainaivalu
PUISNE JUDGE

At Suva

27 February 2026

Solicitors

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