

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

**CRIMINAL CASE NO. HAC 187 OF 2023**

**STATE**

**V**

**O.V [A Juvenile]**

**Counsel** : Mr. S. Swastika and Mr. J. Vaurasi for the State.  
: Ms. S. Shafique for the Juvenile.  
**Date of Hearing** : 24 February, 2026  
**Date of Punishment** : 27 February, 2026

---

**PUNISHMENT**

---

*(The names of the juvenile and both the victims are suppressed they will be referred to as "O.V.", "M.D.", and "R.T." respectively)*

1. Following a trial, the juvenile was found guilty on count one indecent assault, the lesser offence of sexual assault on count two, and three counts of rape under counts three, four and seven. The offences involved two victims, both under the age of 13.
2. A brief summary of the facts is as follows:

- a) Both victims and the juvenile are known to each other. The juvenile is the step-brother of the first victim and the cousin brother of the second victim. The juvenile and the first victim resided in the same house.
- b) In 2022, the victims were aged 8 and 11 respectively, while the juvenile was 16. The first victim testified to one incident of indecent assault and three separate incidents of sexual abuse. The second victim described one incident of sexual abuse perpetrated by the juvenile.
- c) On the first occasion, the first victim's father asked the juvenile to assist her with homework. When she entered the juvenile's bedroom, the juvenile placed her on the mattress, removed her pants and panty, and penetrated her vagina with his finger. She stated that she felt bad and attempted to move but was unable to do so.
- d) On the second occasion, the juvenile laid her on the mattress, removed her pants and panty, and licked her vagina. She described the act as painful. After dressing, she ran outside to meet her mother, who had returned from selling food, but did not disclose the incident because the juvenile had threatened her, saying *"not to tell anyone, otherwise he will kill her."*
- e) On the third occasion, while the first victim and her cousin the second victim were in the kitchen, the juvenile pulled the first victim into the grandmother's bedroom, locked the door, placed the first victim on the mattress, removed her clothing, and penetrated her vagina with his penis three times. She stated that she felt bad and disliked what the juvenile did. Afterward, the juvenile kissed her on the mouth. Upon medical examination the doctor noted that the

hymen was not intact and in her professional opinion the doctor stated that penetration could be the major cause.

- f) In respect of the second victim, on one occasion in 2022, she stayed overnight at the juvenile's house after she returned from church with her grandmother. In the evening, while lying on a mattress in the living room, the juvenile came and removed her pants.
- g) Later that night, he again came and removed her pants and panty, but this time, he spread her legs, and penetrated her vagina with his tongue. She described the act as painful and stated that she attempted to resist but was unable to do so because the juvenile was strong and heavy.
- h) When the victim started to cry, the juvenile left. She did not inform anyone because the juvenile had threatened her, saying "*not to tell anyone, otherwise he would punch her.*"
- i) After the juvenile left for Suva to spend his school holidays, the first victim informed her mother that her vagina was painful. When asked whether someone had touched her, she mentioned the juvenile.
- j) During this conversation it was revealed that the juvenile had also abused the second victim. Upon further questioning by the first victim's mother, the second victim disclosed that she too had been sexually abused by the juvenile.
- k) The matter was subsequently reported to the police. The juvenile was arrested, caution interviewed and charged.

3. Despite ample time given, the state counsel Mr. Nasa failed to file his submissions on punishment. On the hearing date, Mr. Vaurasi sought an adjournment until 3 March, citing the officer in charge being engaged in a trial. The request was refused, and the matter was stood down for oral submissions. Defence counsel promptly filed mitigation submissions, for which this court records its appreciation.

### **MITIGATION**

4. The learned counsel for the juvenile presented the following mitigation:
  - a) The juvenile was 16 years of age at the time of the offending;
  - b) Is a Year 2, University Student doing Bachelor of Education (Primary);
  - c) Is an active member of Vatukoula Methodist Circuit and Narau Rugby Club;
  - d) First time in conflict with the law;
  - e) Cooperated with police during investigations;
  - f) Genuinely remorseful and regrets what he has done;
  - g) Promises not to reoffend;
  - h) Has learnt his lesson, never wants to appear in any court;
  - i) Has obtained scholarship for his studies;
  - j) Seeks leniency of the court.

### **TARIFF**

#### INDECENT ASSAULT

5. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a punishment between 1 to 4 years

imprisonment (*Rokota vs. The State, criminal appeal no. HAA 0068 of 2002*).

### SEXUAL ASSAULT

6. The maximum penalty for the offence of sexual assault is 10 years imprisonment. The tariff for this offence is from 2 years to 8 years imprisonment depending on the category of offending (*see State vs. Epeli Ratabacaca Laca criminal case no. HAC 252 of 2011 (14 November, 2012)*). At paragraphs 6 and 7 Madigan J. had stated the following:

*6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in Abdul Kaiyum HAC 160 of 2010 that the range of sentences should be between two to eight years. 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.*

*7. 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).*

*These very sensible categories of offending are adopted by this Court and they provide a very useful guide to sentencing within the tariff of two to eight years.*

### RAPE

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 punishment between 11 years to 20 years imprisonment.
8. Section 30 (3) of the Juveniles Act also imposes a limit on the punishment of young persons, capping it at a maximum of two years imprisonment.

### **AGGRAVATING FACTORS**

9. The following aggravating factors are evident in this case:

a) Planning

There was some degree of planning by the juvenile. He was aware that both victims were in his house and he took advantage of their presence.

b) Victims vulnerability

The victims were vulnerable and helpless. The juvenile exploited their circumstances, acting boldly and undeterred, which resulted in repeated and persistent offending.

c) Age difference

The victims were 8 and 11 while the juvenile was 16. The age disparity was substantial and heightened the victims vulnerability.

d) Breach of Trust

The victims and the juvenile were closely related and known to each other. The victims trusted the juvenile, which he grossly violated by his actions.

e) Prevalence of the offending

There is an increased prevalence of such offending involving juveniles who are known to their victims.

f) Safety at home

The victims were supposed to be safe in the juvenile's house. However, this was not to be due to the juvenile's actions.

## **SOCIAL WELFARE REPORT**

10. The juvenile is an adult now, so no social welfare report was ordered.

## **DETERMINATION**

11. 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.”*

12. Taking into account section 17 of the Sentencing and Penalties Act, I prefer to impose an aggregate punishment for all counts on which the juvenile has been found guilty.
13. In light of the objective seriousness of the offences committed, the court adopts a starting point of one year’s imprisonment for the aggregate punishment. This is adjusted upward to reflect the aggravating circumstances, and downward to account for mitigating considerations and the juvenile’s good character. As the juvenile has not been subjected to police custody or detention, no further reduction is justified.
14. The court imposes an aggregate punishment of two years imprisonment in respect of one count of indecent assault, one count of sexual assault, and three counts of rape. In accordance with section 26 (2) (a) of the Sentencing and Penalties Act, the court has discretion to suspend the punishment, as the total term does not exceed three years.
15. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

*"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:*

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

16. In determining whether an immediate term of imprisonment or a suspended punishment is appropriate, the court must weigh the relevant special circumstances and reasons advanced for a suspended punishment.

17. The juvenile qualifies as a young person under the Juveniles Act. He is of good character, has demonstrated genuine remorse, and the offences committed were isolated incidents. At the time of offending, he was 16 years of age. He cooperated fully with police during investigations and has accepted responsibility for his actions. Taken together, these factors constitute special reasons which render immediate imprisonment inappropriate and justify consideration of a suspended punishment.
18. The juvenile has since moved on in his life. He is now a second-year university student pursuing an undergraduate degree in Education. His academic excellence has earned him a scholarship. With parental and family guidance, supervision, and support, he has a bright future ahead. The court is satisfied that the imposition of an immediate term of imprisonment would jeopardize that future. Rehabilitation, rather than incarceration, is therefore the appropriate sentencing objective in this case.
19. Having considered section 4(1) of the Sentencing and Penalties Act, this court is of the view that a wholly suspended punishment is just and appropriate in all the circumstances of this case.
20. The only reason why the punishment imposed falls below the usual tariff is that the Juveniles Act prescribes a limit on the punishment available for young persons. Accordingly, the court is bound to apply that statutory limit, and therefore the punishment reflects both the legislative intent and the rehabilitative focus appropriate to a juvenile offender.
21. In summary, an aggregate punishment of two years imprisonment is imposed on the juvenile for all the offences he has been found guilty. This punishment is wholly suspended for a period of five years from today. The

effect of the suspended punishment would be explained to the juvenile in a short while.

22. In view of the close family and domestic relationship between the juvenile and the two victims, and pursuant to the Domestic Violence Act, a permanent Domestic Violence Restraining Order is hereby issued to protect both victims. This order shall operate as a non-contact and non-molestation order, prohibiting the juvenile from any form of contact or interference with the victims.
23. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
**Judge**



**At Lautoka**

27 February, 2026

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Juvenile.**