

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

**Criminal Case No.: HAC 141 of 2024**

**STATE**

**V**

**REVONI NAVATOGA**

**Counsel** : Ms. E. Cabemaiwai for the State.  
: Ms. L. Taukei for the Accused.

**Date of Submissions** : 04 June, 2025

**Date of Sentence** : 12 June, 2025

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "M.N")*

1. The accused is charged with the following offence as per the amended information filed by the Director of Public Prosecutions dated 15<sup>th</sup> April, 2025:

***Statement of Offence***

**RAPE**: contrary to section 207 (1) and (2) (b) (3) of the Crimes Act 2009.

***Particulars of Offence***

REVONI NAVATOGA on the 8<sup>th</sup> of October, 2024, at Toga Village, in Sigatoka, in the Western Division, penetrated the vagina of "M.N" with his fingers, a child under the age of 13 years.

2. This file was first called in the High Court on 31<sup>st</sup> October, 2024 and after several adjournments, on 7<sup>th</sup> May the amended information was put to the accused who pleaded guilty to one count of rape in the presence of his counsel.
3. On the same day, the summary of facts was read and explained to the accused in the ITaukei language, which he understood and admitted.
4. After considering the summary of facts read by the state counsel this court was satisfied that the accused had entered an unequivocal plea of guilty on his freewill. This court was also satisfied that the accused had fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted by the accused satisfied all the elements of the offence of rape as charged.
5. In view of the above, on 7<sup>th</sup> May 2025, this court found the accused guilty and convicted him.
6. The brief summary of facts was as follows:
  - a) The victim and the accused are known to each other, the accused is the victim's uncle. On 8<sup>th</sup> October 2024, the six year old victim was sitting outside her house near a mango tree when the accused grabbed her hand and took her to his house.
  - b) In his bedroom the accused pushed the victim onto his bed. Thereafter, he forcefully removed the victim's pants, and penetrated her vagina with his fingers. As a result the victim's vagina started to bleed and was painful. The victim told the accused to stop but he continued to penetrate her vagina with his fingers.
  - c) The matter came to light when the victim's niece, Milika Tuvou, came back from school and complained to her mother, Karalaini that someone was crying at the accused's house. Karalaini Liku went to

check, on the way, she saw the victim crying and walking towards their house with blood on her skirt, while carrying her shorts in her hand.

- d) Karalaini went to the victim and hugged her. She asked the victim what happened. The victim informed Karalaini that the accused had poked her vagina several times. At this time, Karalaini also noticed blood stains on the victim's thighs.
  - e) The matter was immediately reported to the police, and the victim was taken to the hospital for a medical examination. The doctor's specific medical findings were:
    - a). Hymen not intact; bleeding noted.
  - f) The accused was arrested, and caution interviewed during which he made full admissions. He was subsequently charged.
7. The state counsel filed sentence submissions and the defence counsel filed mitigation submissions for which this court is grateful.
8. The following personal details and mitigation were presented on behalf of the accused:
- a) The accused was 41 years of age at the time of the offending;
  - b) First offender;
  - c) Never Married;
  - d) He was a small scale Farmer earning \$50.00 per week;
  - e) Takes full responsibility for his actions;
  - f) Is remorseful for his actions;
  - g) Seeks forgiveness from the court;
  - h) Regrets what he has done;
  - i) Pleaded guilty at the first available opportunity.

9. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v 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**

10. The aggravating factors are:

a) Breach of Trust

The accused and the victim are known to each other and they were living in the same village. The accused grossly breached the trust of the victim by what he did to her. The accused also breached the sanctity of the relationship that existed between the accused and the victim.

b) Age Difference

The victim was 6 years of age at the time of the offending and the accused was 41 years. The age difference is substantial, the accused being a matured adult should have known better.

c) Vulnerable Victim

The victim was vulnerable, helpless and unsuspecting. The accused took advantage of this.

d) Planning

There is some degree of planning by the accused he knew the victim was alone so he grabbed her hand and took her to his house.

## **TARIFF**

11. The maximum punishment 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.

## **GUILTY PLEA**

12. The accused pleaded guilty at the earliest opportunity. In *Gordon Aitcheson vs. The State, criminal petition no. CAV 0012 of 2018 (2 November, 2018)* the Supreme Court offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

[14]. In ***Rainima -v- The State*** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:

*“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”*

In ***Mataunitoga -v- The State*** [2015] FJCA 70; AAU125 of 2013 (28<sup>th</sup> May 2015) Goundar JA adopted a similar but more flexible approach to this issue:

*“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a*

*matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”*

*[15]. The principle in **Rainima** must be considered with more flexibility as **Mataunitoga** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.*

13. This court accepts that genuine remorse leading to a guilty plea is a substantive mitigating factor in favour of an accused, however, the guilty plea must be entered in the true spirit of remorse since genuine remorse can reduce the harshness in the final sentence (*see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016)*).
14. This court also accepts that the accused has shown some remorse when he pleaded guilty. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty is not genuine remorse (*see Gordon Aitcheson vs. The State, (supra)*). In this regard, the sentencing court has a responsibility to assess the guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. There is no doubt in this case there is an early guilty plea.
15. After assessing the objective seriousness of the offence committed, I impose 11 years imprisonment (lower range of the scale) as the starting point of the sentence. The sentence is increased by 4 years for aggravating factors. The accused receives a 1 year reduction for mitigation and good character although

his personal circumstances and family background have little mitigatory value. The interim sentence is now 14 years imprisonment.

16. This court acknowledges that the accused has shown some remorse by pleading guilty at the earliest opportunity in the face of overwhelming evidence against him. However, given the nature of the allegation, his guilty plea has not only saved the court's time but also spared the victim from reliving her experience in court. Accordingly, the sentence is further reduced by 1 year for the guilty plea. The sentence is now 13 years imprisonment.
17. The defence counsel in her mitigation submissions is asking this court to consider the fact that the accused had a history of mental illness which should be taken as a mitigating factor. It is to be noted that by virtue of this court's order the accused was escorted to the St. Giles Hospital for a psychiatric evaluation concerning his:
  - a) Mental health condition at the time of the alleged offence; and
  - b) Fitness to stand trial and ability to understand the court proceedings.
18. By Psychiatric Evaluation Report dated 25<sup>th</sup> February, 2025 the doctors were of the opinion:
  - *That Mr. Revoni Navatoga is fit to plead in court.*
  - *He is competent to stand trial.*
  - *It is highly likely that he was able to comprehend the nature and quality of conduct and that the conduct was wrong at the time of alleged crime.*
  - *It cannot be confirmed whether he was under the influence of psychoactive substance at the time of alleged crime.*
  - *Should he be moved to higher authorities, the forensic team to be notified for further planning of his treatment and reviews.*

19. Furthermore, at page 2 of the report under the heading IV. RELEVANT HISTORY AND COLLATERAL INFORMATION the doctors have recorded the following:

*Mr. Revoni Navatoga was first seen at St Giles Hospital in year 2013 for aggressive behaviour chasing family members out of the house, walking around naked and talking to self. He was diagnosed with schizophrenia and substance use disorder, cannabis. He was then seen by the forensic unit in 2016 for some charge of "assault causing actual bodily harm". He had defaulted clinics and was not adherent to his oral medicines. This encounter was solely due to the court order.*

20. The question for this court is whether the accused's mental illness is relevant to sentencing, and if it is, to what extent. Goundar J. in *State vs. Solomone Vakalalabure* [2018] FJHC 384; HAC106.2018 (9 May 2018) at paragraph 8 of the sentence considered the following:

*In R v Anderson [1981] VR 155; (1980) 2 A Crim R, it was held that the fact that an offender was, or is, suffering from a mental illness either at the time of the commission of the offence or at the time of sentencing may be taken into account at sentencing. Further, an offender's mental condition can have the effect of reducing a person's moral culpability and matters such as general deterrence, retribution and denunciation have less weight (Muldrock v The Queen (2011) 244 CLR 120 at [53]; R v Israil [2002] NSWCCA 255 at [23]; R v Henry (1999) 46 NSWLR 346 at 354). This is especially so where the mental condition contributes to the commission of the offence in a material way (DPP (Cth) v De La Rosa (2010) 79 NSWLR 1 at [177]; Skelton v R [2015] NSWCCA 320 at [141]).*

21. After a careful consideration, I am not inclined to accept the accused's mental illness as a mitigating factor for the following reasons:

- a) There is no evidence of any relapse at the time the offence was committed;



- b) There is no evidence that the applicant's mental condition materially contributed to the commission of the offence;
  - c) There is no evidence confirming the accused's mental health status or his behaviour prior to the incident.
22. However, in fairness to the accused, a recommendation will be made to the Commissioner of Corrections Services for the accused to be referred to a psychiatrist for regular reviews, when necessary.
23. Furthermore, the accused has been in remand for 7 months and 29 days. In exercise of my discretion, I reduce the sentence by 8 months in accordance with section 24 of the Sentencing and Penalties Act, as a period of imprisonment already served. The final sentence is 12 years and 4 months imprisonment.
24. The sexual abuse of a child is one of the most serious forms of criminal conduct, and offenders must be dealt with severely. When adults known to the victim commit such abuse, they should not expect any mercy from this court. The punishment must reflect society's outrage and condemnation of such conduct. In these circumstances, long term imprisonment is inevitable.
25. 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 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."*

26. 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.”*

27. 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 present;*
- (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.*

28. Mr. Navatoga, you have committed a serious offence against your 6 year old niece. The victim was unsuspecting and vulnerable. You should have exercised restraint. You showed no regard for the victim's safety. A deterrent sentence is necessary.
29. There has been an increase in sexual offences committed by mature adults known to the victims. It is shocking to note how the accused carried out this offence against the victim. The victim's medical examination report speaks for itself.
30. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the 6 year old victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
31. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.

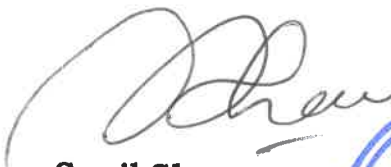
32. In this regard I have taken into consideration the principle stated by the Court of Appeal in *Paula Tora v The State* AAU0063.2011 (27 February 2015) at paragraph 2 where Calanchini P (as he was) said:

*[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.*

33. 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.*

34. Considering the above, I impose a non-parole period of 10 years to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate for the rehabilitation of the accused and for meeting the expectations of the community, which is just outcome given the circumstances of this case. The non-parole period is below the tariff because the accused pleaded guilty at the earliest opportunity, expressed some remorse, cooperated with the police, and what he did was out of character.
35. In summary, I impose a sentence of 12 years and 4 months imprisonment, with a non-parole period of 10 years to be served before the accused becomes eligible for parole. Furthermore, it is recommended that the Commissioner of Corrections Services facilitate regular psychiatric reviews of the accused from the St. Giles Hospital, when necessary. Due to the close relationship between the accused and the victim, a permanent non-molestation and non-contact orders are issued under the Domestic Violence Act to protect the victim.
36. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
Judge



**At Lautoka**

12 June, 2025

**Solicitors**

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

**Office of the Legal Aid commission for the Accused.**