

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

**CRIMINAL CASE NO: HAC 311 of 2022**

**STATE**

**-v-**

**SALOTE NAMESA**

**Counsel** : Ms. Kumar P for State  
: Ms. Dean, A for the Accused

**Date of Trial** : 20<sup>th</sup> May 2024  
**Date of Judgment** : 22<sup>nd</sup> January, 2025  
**Date of Submissions** : 17<sup>th</sup> & 25<sup>th</sup> March, 2025  
**Date of Sentence** : 19<sup>th</sup> May, 2025

**SENTENCE**

1. The complainant's name will be referred to as "**ABBL**" pursuant to the name Suppression Order.
2. **Salote Namesa**, after a full trial, this court finds you guilty and convicted you for two counts of Rape contrary to **section 207(1),(2)(b) and (3) of the Crimes Act, 2009**.
3. The evidence indicates that between 1<sup>st</sup> January, 2021 and 31<sup>st</sup> December, 2021, you penetrated the vagina of ABBL, a girl under the age of 13 years, with your fingers. Than on the same time period, you also penetrated the vagina of ABBL with your tongue.

**Sentencing Guidelines**

4. Before sentencing you, the court has considered **sections 4(1), 4(2) and 4(3) of the Sentencing and Penalties Act, 2009**.

**Law and Tariff**

5. The maximum penalty for rape is life imprisonment.
6. However, a new tariff has now been set for child rape in the Supreme Court of Fiji decision in **Aitcheson v State [2018] FJSC 29; CAV 0012.2018** (2 November 2018) whereby in paragraph 25, the Court held that:

*"The tariff previously set in Raj v State [2014] FJSC 12; CAV 03 of 2014 (20 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".*

7. In the High Court of Fiji in **State v Tikodramai** - Sentence [2023] FJHC 185; HAC17.2021 (30 March 2023) stated;

*[27] 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."*

### **Starting Point**

8. The court selects a starting point of 11 years due to the seriousness of such offending.

### **Aggravating Factors**

9. The aggravating factors are as follows;
- (a) The complainant is the accused niece. She is related to her from both of her parents. This is a serious breach of trust case.
  - (b) Their age difference – complainant was 12 years old and the accused was 25 years at the time of the offending. Being an adult, the accused is in a position to determine as to what conduct is right or wrong.
  - (c) The complainant was in a vulnerable position and the accused took advantage of her vulnerability.
  - (d) Court noticed the significant trauma of complainant during her evidence in court.
10. In considering the above factors, the court increases your sentence by 02 years and arrive at 13 years imprisonment.

### **Mitigating Factors**

11. The mitigating factors are that; you are now 27 years old. You are employed as a kitchen hand at Toorak Central Restaurant. You are the sole bread winner for your parents and a brother. You are also a first offender.
12. Based on the above factors, the court reduces 01 year from your sentence and arrive at 12 years imprisonment.

### **Sentence**

13. **Salote Namesa**, your sentence is now 12 years imprisonment.

### **Time Spend in Custody**

14. Since you had already spend 5 months, 2 weeks and 3 days in custody before you were granted bail on 16<sup>th</sup> February, 2023, under **section 24** of the **Sentencing and Penalties Act, 2009**, the court is obliged to deduct the period of remand from your sentence. The court will deduct 06 months from your sentence.

### **Final Sentence**

15. Your final custodial term of imprisonment is 11 years and 6 months.

### **Sentence for more than one offence**

16. **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."*

17. Since you are convicted of more than one offence founded on the same facts pursuant to **section 17** of the **Sentencing and Penalties Act, 2009**, your head sentence is 11 years and 06 months imprisonment.

### **Summary of Sentence**

18. Your sentence is summarized as follows;

Count 1 - Rape (Head Sentence) – 11 years and 06 months imprisonment

Count 2 – Rape – 11 years and 06 months imprisonment

19. I order that both terms are to be served concurrently to each other. Therefore, your total term is 11 years and 06 months imprisonment.

### **Non-parole Period**

20. In considering **section 18(1)** of the **Sentencing and Penalties Act, 2009**, I fix your term of **non-parole to 06 years imprisonment**.

### **Permanent Domestic Violence Restraining Order**

21. Furthermore, since you are in a domestic relationship with the complainant, I issue a Permanent Domestic Violence Restraining Order pursuant to **section 27** of the **Domestic Violence Act, 2009** which is Standard Non Molestation Conditions.

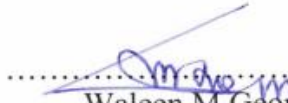
## **Final Comments**

22. Sexual exploitation and abuse of children where the perpetrators are none other than those who are in position of power or well known to the victims are prevalent in our community. The court has a duty to punish these perpetrators to send a message to others that such crime will be tolerated.

## **Appeal Period**

23. If any of the parties not in agreement with the Court's decision, you have 30 days to appeal to the Court of Appeal.



  
Waleen M George  
Acting Puisne Judge  
**HIGH COURT OF FIJI**

At Suva this 19<sup>th</sup> day of May, 2025.

Solicitors for the State: Office of the Director of Public Prosecutions, Suva

Solicitors for the Accused: Office of the Legal Aid Commission, Suva