

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

**Crim. Case No: HAC 9 of 2018**

**BETWEEN:** STATE

**PROSECUTION**

**A N D:** SAMUELA NABA

**ACCUSED PERSON**

**Counsel** : Ms. R. Uce for the State  
Ms. N. Sharma for 2<sup>nd</sup> Accused

**Date of Sentence** : 23<sup>rd</sup> December 2020

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**SENTENCE**

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1. Mr. Samuela Naba, you pleaded guilty to two counts of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offence are that:

***COUNT 1***

***(Representative Count)***

***Statement of Offence***

**RAPE:** *Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.*

*Particulars of Offence*

**SAMUELA NABA** between the 1<sup>st</sup> of January 2017 and 5<sup>th</sup> January 2018 at Nadi in the Western Division penetrated the vagina of **TARAIVINI MUSARAU VUNITALI**, an 8 year old girl with his finger.

**COUNT 2**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**SAMUELA NABA** on the 6<sup>th</sup> day of January 2018 at Nadi in the Western Division penetrated the vagina of **TARAIVINI MUSARAU VUNITALI**, an 8 year old girl with his finger.

2. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you to these two offences of Rape as charged.
  
3. According to the summary of facts, which you admitted in open Court, you are a maternal uncle of the Complainant. She was eight years old at the time these two offences took place. You were 70 years old at that time. In respect of the first count, you had seen the Complainant was returning home after visiting her aunt when you were at the mango tree near your house. You had called her and gave her 50 cents to buy chewing gum. She then went to the shop to purchase chewing gum. After that, she came back to you and sat beside you under the mango tree. You had then put your hand inside her undergarment and penetrated her vagina with your finger. You have told the Complainant not to tell anyone about this incident. On the 6th of January 2018, you had seen that the Complainant was at the mango tree, trying to get some mangoes. You had then gone to her and penetrated her vagina with your finger.

4. Rape is one of the most humiliating and distressing invasions of the integrity of the human body. It becomes more serious when it is involved with a child victim. Hence, I find the Rape of this nature is a severe crime. In this case, the Complainant was sexually abused by a person who is known to her. This form of sexual exploitation of children by the known adult is a serious offence.
5. The Supreme Court of Fiji in **Aitcheson v State [2018] FJSC 29; CAV0012.2018 (the 2nd of November 2018)** held that:

*"The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the Court must consider widening the tariff for Rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent."*

### **Purpose of the Sentence**

6. In view of the severe nature and prevalence of the crimes of this nature, the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for the offences of this nature to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.
7. These two counts of Rape are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.

## Tariff

8. Gates CJ in Aitcheson v State (Supra) held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
9. Rape is a physical invasion of a sexual nature committed on the victim under a coercive circumstance. (*vide The Prosecutor V Jean-Paul Akayesu Case No ICTR-96-4-T*). Hence, the offence of Rape is an invasion of the bodily integrity and the sexual autonomy of the victim. It infringes personal liberty and rights to have a private life of the victim. Therefore, the degree of invasion of the bodily integrity and sexual autonomy of the victim is an indispensable factor in determining the gravity and impact of the crime on the victim.
10. The victim impact report states that this crime has adversely affected the complainant emotionally and psychologically. Her lifestyle, both personal and social, has changed adversely after this incident. According to the Victim Impact Report, this crime has shattered her self-confidence, thus making her scared and self-blame person. Therefore, I find that the level of harm in this offence is significantly high.
11. You had meticulously planned and executed this crime. You have lured the Complainant to you by giving her money to buy chewing gum. You had tried to conceal this crime by telling the young complainant not to tell anyone about this crime. I accordingly find that the level of culpability is significantly high in this crime.
12. Having considered the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, it is my opinion that this is a suitable case where the Court should select the starting point at the mid-range of the tariff. Hence, I select fourteen (14) years as the starting point.
13. The Complainant is your niece. You are an elderly relative of the Complainant. Instead of caring and looking after this small young Complainant, you manipulatively used her naivety in childhood to satisfy your lustful sexual gratification. The age difference between

you and the Complainant is substantially high. She was eight (08) years old, and you were seventy (70) years old when this offence took place. By committing this crime, you have exposed this eight years old child to sexual activities at a very young age, thus preventing her from having a natural growth of maturity in her life. I consider these grounds as aggravating factors in this offending.

14. The learned Counsel for the Defence, in her mitigation submissions, submitted your personal and family background, which I find no mitigatory value.
15. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. I find that your previous good character, especially the fact that you have not been tainted with any previous conviction for an offence of sexual nature, would have definitely allowed you to freely move around in the community without any suspicion of risk. The community had perceived you as a man of good character and not as a child pedophile and allowed you to be feely moved in the community. Moreover, there is no suggestion that you have significantly contributed to the community or have any reputation in the community. Therefore, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meager discount for your previous good character.
16. You pleaded guilty to this matter before the commencement of the hearing. Therefore, you are entitled to a discount for your plea of guilty.
17. In view of the reasons discussed above, I increase four (4) years for the aggravating factors to reach an interim period of eighteen (18) years. Because of your previous good character, I give you one (1) year discount. I reduce further two (02) years for the plea of guilty and reach fifteen (15) years imprisonment as your final sentence.
18. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find thirteen (13) years of the non-parole period would

serve the purpose of this sentence. Hence, you are not eligible for any parole for thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### **Head Sentence**

19. Accordingly, I sentence you for fifteen (15) years imprisonment as an aggregate sentence for these two counts of Rape as charged in the information. Moreover, you are not entitled to any parole for thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### **Actual Period of the Sentence**

20. You have been in remand custody for this case for nearly seventy-three (73) days before the sentence as the Court did not grant you bail. In pursuant to Section 24 of the Sentencing and Penalties Act, I consider three (03) months as a period of imprisonment that you have already served.
21. Accordingly, the actual sentencing period is **fourteen (14) years and nine (09) months** imprisonment with a non-parole period of **twelve (12) years and nine (09) months**.
22. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competence Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Act.

23. Thirty (30) days to appeal to the Fiji Court of Appeal.



R. D. R. T. Rajasinghe

JUDGE

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.