

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

**Crim. Case No: HAC 150 of 2018**

**STATE**

**vs.**

**METUISELA MATAYALEWA**

**Counsel:** Ms. U. Tamanikaiyaroi for the State  
Ms. M. Ratidara for Accused

**Date of Hearing:** 02<sup>nd</sup>, 03<sup>rd</sup>, 04<sup>th</sup> December 2019

**Date of Closing Submission:** 05<sup>th</sup> December 2019

**Date of Summing Up:** 10<sup>th</sup> December 2019

**Date of Judgment:** 11<sup>th</sup> December 2019

**Date of Sentence:** 14<sup>th</sup> January 2020

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**SENTENCE**

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1. The name of the complainant is suppressed.
2. Mr Metuisela Matayalewa, you stand convicted for two counts of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act, which carries a maximum penalty of life sentence, and three counts of Defilement of Young Person Between 13 and 16 years of Age, contrary to Section 215 of the Crimes Act, which carries a maximum penalty of ten years imprisonment.
3. It is proved during the hearing that you have taken the complainant to the toilet on two separate occasions in 2016 and penetrated into her vagina with you penis. The complainant is your cousin and she was 12 years old in 2016. On three separate occasions, you had

sexual intercourse with the complainant when she was a young girl between 13 and 16 years old.

4. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a child victim. Hence, I find the rape in this nature is a very serious 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 main purpose of this sentence is founded on the principle of deterrence. It is a 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 custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the society denounce such crimes without any reservation.
6. Hon. Former Chief Justice Gates in **Aitcheson v State ( [2018] FJSC 29; CAV0012.2018 (2 November 2018)** held that the tariff for the rape of a child is between eleven (11) to twenty (20) years' imprisonment period. The tariff that was in force for the offence of rape of a child in 2016 and 2017 ranges from ten (10) years to sixteen (16) years. (**Anand Abhay Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014)**).
7. The tariff for Defilement of Young Person Between 13 and 16 years of Age is between 02 years to 08 years. (**State v Mawi [2019] FJHC 324; HAC17.2017 (12 April 2019, State v Dinono - Sentence [2019] FJHC 871; HAC336.2018 (5 September 2019)**).
8. All of these five counts are founded on the same series of offending of the 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.
9. According to the victim impact report, the complainant is going through an adverse emotional and psychological trauma due to this incident. Her life style has adversely changed after this incident. She has been marginalised and isolated by the villagers thus.

making her withdrawn and isolated personality. You have used substantial amount of force to push the complainant into the toilet in respect of the first and second counts. You have threatened her not to tell anyone about these incidents. Therefore, I find the level of harm and culpability are substantially high in this offending.

10. Having taken into consideration the level of harm and culpability and the seriousness of the offences, I select Twelve (12) years as the starting point.
11. You have breached the trust that the complainant had in you not only as her cousin but also as an elderly neighbour who frequently visits her house. The complainant was living with her grandmother and uncle as her mother was away in 2016 and then died in 2017. Whereabouts of her father is not known. You used the vulnerability of this child to fulfil your disgraceful sexual desire. The age difference between you and the complainant is substantially high. She was just twelve (12) years old and you were twenty eight (28) years old in 2016. By committing this crime, you have exposed this twelve years old child to the sexual activities at very young age, thus preventing her to have a natural growth of maturity in her life. I consider these grounds as aggravating factors in this offending.
12. The learned counsel for the defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
13. The learned counsel for the defence submitted in her submission that you are a first offender. However, there is no information or fact that you have significantly contributed to the community or have any reputation in the community. Therefore, I find that the previous good character has a meagre mitigatory value.
14. In view of the reasons discussed above, I increase further two (2) years for the aggravating factors to reach interim period of fourteen (14) years. In view of the above discussed mitigatory grounds I reduce one (1) year to reach a period of thirteen (13) years imprisonment as your final sentence.

15. Having considered the seriousness of this crime, the level of culpability and harm, the purpose of this sentence, your age and opportunities for rehabilitation, I find eleven (11) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


### Head Sentence

16. Accordingly, I sentence you for a period of **thirteen (13) years** imprisonment as an aggregate sentence to the two counts of Rape and three counts of Defilement of Young Person Between 13 and 16 years of Age. Moreover, you are not entitled to any parole for a period of **eleven (11) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Actual Period of the Sentence

17. You have been in remand custody for this case for a period of nearly five (5) months and eleven (11) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of six (6) months as a period of imprisonment that have already been served by you.
18. Accordingly, the actual sentencing period is **twelve (12) years and six (6) months** imprisonment with non-parole period of **ten (10) years and six (6) months**.
19. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

At Suva  
14<sup>th</sup> January 2020

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Office of the Legal Aid Commission for the Defence.