

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

**Crim. Case No: HAC 82 of 2022**

**STATE**

vs.

**ABDUL RIAZ SHAMIM**

**Counsel:** Mr. J. Singh for the State  
Ms. N. Ali for Accused

**Date of Hearing:** 27<sup>th</sup> and 30<sup>th</sup> March 2023

**Date of Closing Submission:** 30<sup>th</sup> March 2023

**Date of Judgment:** 05<sup>th</sup> April 2023

**Date of Sentence:** 27<sup>th</sup> April 2023

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**SENTENCE**

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1. Mr. Abdul Riaz Shamim, the Court found you guilty of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment.
2. It was proved during the hearing that you had taken the Complainant, who was 14 years old in 2022, to your mother's place on the pretext that you would show her your phone. You then penetrated her vagina with your penis without her consent. You are a close family member of the Complainant's family, as she considered you as a brother.

3. This is a case of sexual exploitation of a young girl by a known person. Sexual exploitation of children by known persons to them has become a social menace. The social enigma of abusing children for sexual gratification needs to address promptly and effectively. Therefore, I find the objective seriousness of the crime extremely high.
4. 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 offences of this nature to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.
5. The maximum penalty for Rape is life imprisonment. Gates CJ in **Aitcheson v State (J2018) FJSC 29; CAV0012.2018 (the 2nd of November 2018)** held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
6. Rape is a physical invasion committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim.
7. The Victim Impact Report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence, and she has become withdrawn. Therefore, I find the level of harm in this offence is significantly high.
8. You had meticulously executed this crime of Rape after taking her to your mother's place. You created this opportunity by luring her to your mother's place, saying you would show her your phone. I accordingly find that the level of culpability is high in this crime.
9. Considering the serious nature of this offence, the purpose of the sentence, the level of harm and the level of culpability, I select twelve (12) years as the starting point.

10. The Complainant considered you as a brother since you are very close to her family. You had abused that trust and confidence she had in you. You have exposed this child Complainant to sexual activities by committing this crime at a very young age. I consider these reasons as aggravating factors of this offence.
11. Since the hearing proceeded in your absence, there are no mitigating submissions before this Court. However, the Prosecution submitted that you have no previous conviction and are a first offender.
12. I find that your previous good character, especially since you have not been tainted with any prior conviction for an offence of sexual nature, would have allowed you to move around freely without any suspicion of risk. The Complainant's family had perceived you as a man of good character, not a child paedophile, and allowed you to move with the Complainant freely. Therefore, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meagre discount for your previous good character.
13. In view of the reasons discussed above, I increased further by two (02) years for the aggravating factors to reach fourteen (14) years. Because of your previous character, I reduced one (01) year. Accordingly, I reach thirteen (13) years of imprisonment as your final sentence.
14. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find eleven (11) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### **Head Sentence**

15. Accordingly, I sentence you to a period of thirteen (13) years imprisonment for one count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Act. Moreover, you are not entitled to parole for eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

**Actual Period of the Sentence**

16. You have been in remand custody for this case for nearly ten (10) days before the sentence, as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider one (01) month as a period of imprisonment you have already served.
17. Accordingly, the actual sentencing period is **twelve (12) years and eleven (11) months** imprisonment with a non-parole period of ten **(10) years and eleven (11) months**.
18. A Bench warrant is issued against the Accused.
19. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "R.D.R.T. Rajasinghe".

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**Hon. Mr. Justice R.D.R.T. Rajasinghe**

**At Suva**

27<sup>th</sup> April 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.