



Rape, contrary to Section 207 (1) and 2 (c) of the Crimes Act, which carries a maximum penalty of life imprisonment.

3. Consequent upon your plea of not guilty for all of these counts, the matter proceeded to hearing. The hearing commenced on the 16th of April 2018. The Complainant took the stand to give evidence and concluded her evidence in chief. At this stage of the proceedings, you informed the court that you wish to change your plea. Accordingly, you pleaded guilty for these eight counts as charged in the information on your own free will on the 18th of April 2018. 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 convicted you for each of these eight counts.

### **Summary of Facts**

4. The prosecution tendered the summary of facts, which you admitted in open court. I will now reproduce the contents of the summary of facts as follows:
  1. The victim is “AA” also known as “AB”. The victim was born on 13 October 1993 and is 24 years of age. The victim’s father is Tevita Bulivakarua, the Accused in the matter born on 14 September 1968 and is 49 years of age. The victim’s mother is Keleni Lutu who died on 17<sup>th</sup> October 2005.
  2. The victim was residing with her father at Kubukawa Road, Tovata. After the death of the victim’s mother, the Accused had raised the victim. The Accused being the father was in a position of authority and control of the victim and also the person who was taking care of the victim after her mother’s death.
  3. The victim was a student. She was attending Kalabu Fijian School in 2005. In 2010 she attended Nakasi High School.

#### **Count 1 – Indecent Assault on a Female**

4. Between the 1<sup>st</sup> day of October 2005 and the 31<sup>st</sup> day of December 2005, the victim was 12 years of age, when the Accused unlawfully and indecently assaulted her by touching the victim's breasts and vagina, whilst she was sleeping with her siblings in her room at Tovata. Whilst the victim was sleeping in the bedroom at their residence in Tovata, with her siblings namely Amalaini Buliasewa and Taniela Veitata, the Accused pulled the victim's pants below her knees and her top up to chest and touched her breast and vagina.

#### **Count 2 – Sexual Assault**

5. Between 1<sup>st</sup> day of February 2010 and the 31<sup>st</sup> day of December 2011 the victim was 18 years of age, when the Accused unlawfully and indecently assaulted the victim by touching her breasts. During this period the Accused approached the victim at night while she was studying in the living room. The Accused came behind the victim and then touch her breasts on top of her clothing. This incident occurred two or three times in a week during the mentioned period.

#### **Count 3 – Attempted Rape**

6. Between the 1<sup>st</sup> day of January 2007 and the 31<sup>st</sup> day of January 2008, the victim was 14 years old when the Accused attempted to have carnal knowledge with her. The Accused attempted to have carnal knowledge of the victim by attempting to insert his penis into her vagina without her consent. The Accused during this period between 4am to 5am, would approach her while she was sleeping in the bedroom at Tovata, he would wake her up, pull her pants to her knees and attempt to insert his penis into her vagina knowing that she was not consenting. This incident occurred two or three times in a week during the mentioned period.

#### **Count 4 – Rape**

7. Between the 1<sup>st</sup> day of August 2013 and the 31<sup>st</sup> day of December 2013, the victim was 20 years old, when the Accused at Tovata took the

Complainant from their residence to a tree near their residence which was 75 meters away from their residence. When he reached the place, he then asked the victim to lie-down and he then took off her pants. The Accused took off his pants than, took out his penis then he laid on the victim and penetrated her vagina with his penis. The victim did not like what he was doing and told him. The victim did not consent to the act and the Accused was aware that she was not consenting however he continued to penetrate her vagina with his penis for approximately 2 to 3 minutes. This incident occurred two to three times in a week during the mentioned period at night.

#### **Count 5 – Rape**

8. Between the 1<sup>st</sup> day of August 2013 and the 31<sup>st</sup> day of December 2013, the victim was 20 years old when the Accused took the Complainant from their residence at Tovata to the side of the pig pen, which is approximately 25 metres away from their residence. The Accused then pulled down his pants, took out his penis and asked the victim to suck his penis. The victim refused to suck his penis, he therefore threatened the victim and told her that he would hit her head with a stone if she did not suck his penis. The Accused as a result penetrated the mouth of the victim with his penis without her consent and was aware that the victim was not consenting however, he continued with the act for approximately 5 to 6 minutes. The incident occurred two or three times in a week.

#### **Count 6 – Rape**

9. Between the 1<sup>st</sup> day of October 2016 to the 31<sup>st</sup> day of December 2016, the victim was 23 years old when the Accused at their residence, approached the victim while she was sleeping in the living room and at times in the bedroom with her siblings. The Accused used a knife or a hammer to threaten her and say if she refused to have sex with him he would poke her with the knife. The victim was asked to lie-down on the floor in the bedroom while the Accused removed his pants. The Accused also told the victim not to shout as other members of the house would

know and create problems. The Accused than after pulling the victim's pants would penetrate the victim's vagina with his penis. The victim did not consent to the act and the accused had knowledge that she was not consenting to the act. This incident occurred two or three times a week.

#### **Count 7 – Rape**

10. Between the 1<sup>st</sup> day of March 2017 and the 19<sup>th</sup> day of May 2017, the Victim was 23 years old when the Accused at their residence, approached the victim while she was sleeping at night inside the bedroom. The victim was in a relationship with a boy during this period therefore the Accused told the victim that she could only visit her boyfriend if she had sex with the Accused. The Accused by exercising his authority over the victim thereby obtained the consent of the Complainant. The consent was not obtained freely and voluntarily, the Accused was aware that she was not freely and voluntarily consenting to the act. The Accused would make the victim lie-down on the floor in the bedroom, he pulled down his pants and then penetrated the victim's vagina with his penis for approximately 2 to 3 minutes. This incident was repeated during the weekends in the mentioned period.

#### **Count 8 – Sexual Assault**

11. Between the 1<sup>st</sup> day of March 2017 and the 19<sup>th</sup> day of May 2017, the victim was 23 years old when the Accused at their residence, procured the victim to hold and massage his penis. He approached the victim while she was sleeping in the bedroom at night, woke her up and asked her to hold and massage his penis. The victim refused to commit an act of gross indecency, that is to hold and massage the Accused's penis. The Accused pulled down his pants, took out his penis and then forced the victim to hold his penis with her hand and massage it. This incident repeated during the weekends in the mentioned period.
12. The victim felt scared and didn't like what the Accused did to her at the time the Accused did the abovementioned acts. She cried and did not

consent to the act's, however, the Accused said that she reminded him of her mother and continued with the acts.

### **Seriousness of the Offending**

5. This is a case of an incestuous father, using his own biological daughter for surrogate sexual gratification. Many cultures have developed rules and norms that prohibit sexual relationship between closely related persons. Incestuous relationship of parent and children has condemned and deprecated by many societies. A father, using his own daughter as a surrogated sexual partner is not only against the acceptable social norms and values, but also the acceptable human behaviours.
6. Parents are the primary caregivers in which a child places trust and depends upon during his/her growing years. Irrespective of that trust and dependence laid upon by the child and instead transforming into a monstrous demon and destroying the innocent childhood of the child with his own sadistic and lustful sexual satisfaction, undoubtedly jeopardizes the child's entire future as she will never recover from the terror, degradation, humiliation and breach of trust. Therefore, incest is a rape by extortion, in which a child's very childhood becomes a weapon used to control her. Therefore, I find these offences are very serious in nature.

### **Purpose of the Sentence**

7. Having taken into consideration the seriousness of these offences, I find that this sentence must be based upon on the principle of deterrence in order to deter offenders or other persons from committing offences of the same or similar nature and also protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of these offences and also reflect that the civilized society denounce such crimes without any reservation.

## Tariff

8. The tariff for the offence of Indecent Assault on Female is one (1) to four (4) years. **(State v Tuwai [2011] FJHC 287; HAC075.2010S (24 May 2011) Rokota v State (Criminal Appeal No HAA0068 of 2002).**
9. The tariff for the offence of Attempted Rape is twelve (12) months to five (5) years imprisonment. (Aunima v The State [2001] FJHC 105; HAC0033J.2001s (27 June 2001).
10. The tariff for the offence of Sexual Assault is two (2) years to eight (8) years imprisonment. **(State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012).**
11. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.

## Aggregate Sentence

12. All of these offences are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence for all of these offences pursuant to Section 17 of the Sentencing and Penalties Act. Section 17 of the Sentencing and Penalties Act states that:

*“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.”*

### **Level of Harm**

13. The complainant is your biological daughter. You have started to unleash these heinous crimes on her after her mother (your wife) died in 2005. You have told the complainant that she reminds you of your wife, which is her mother. Therefore, you have forced her to surrender her body for you to satisfy your disgraceful sexual gratification. In respect of the second count of Sexual Assault, it was revealed that you came behind her while she was studying in the night and started to touch her breast. According to the evidence given by the Complainant, she has found a boyfriend in 2013 and was impregnated by this boyfriend. Having heard of it, you forcefully took her beside the pigsty and penetrated her mouth with your penis. You then forcefully penetrated into her vagina with your penis, while she was two months pregnant.
14. The complainant in her evidence said that she wanted to kill herself as she was not able to bear the trauma caused by these disgraceful crimes. You have destroyed both her childhood and adolescent by making her a sex slave of her own father. The complainant in her evidence said that she was never treated like a human by her father.
15. In view of these reasons, I find that the level of harm in these offences is significantly high.

### **Level of Culpability**

16. You have always used force and threatened her whenever she refused to yield to you to satisfy your lustful sexual desire. In respect of the fourth and fifth counts, you penetrated into her vagina and mouth with your penis when she was two months pregnant. You have threatened her that you will hit her head with a stone if she refuses to do it. It was revealed that you have allowed her to visit her boyfriend if only she had performed sexual intercourse with you. You have approached her in the night while she was sleeping and threatened her with a knife or a hammer to have sexual intercourse with you. I find that you have not only exerted physical force and violence but also psychological aggression on the complainant. I accordingly find that the degree of culpability in these offending are significantly high.



### Starting Point

17. Having considered the seriousness of these offences, and the level of harm and culpability in the offending, I select fourteen (14) years as the starting point for this aggregate sentence.

### Aggravating Grounds

18. You abused the trust and confidence that she had kept you as her father. You started doing this horrific crime on the complainant when she was just twelve (12) years old. You were the only parent she had after the death of her mother in 2005. Instead of protecting her with love and affection, you used her vulnerability in her childhood as a weapon to satisfy your reprehensible lust of sexual gratification. You deceitfully plot this crime on her by using your position of authority in the family. She had no escape, but to surrender to your monstrous and heinous act. I consider these grounds as aggravating factors of these offences.

### Mitigating Grounds

19. The learned counsel for the defence submitted in your mitigation about your personal and family circumstances. However, such family and personal mitigations have very minimal mitigatory value.
20. I now take my attention to consider the mitigatory value in your plea of guilty pursuant to Section 4 (2) (f) of the Sentencing and Penalties Act. Section 4 (2) (f) of the Sentencing and Penalties Act states that:

*“In sentencing offenders, the court must have regard to;*  
*f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;”*

21. You denied these charges until the matter proceeded to the hearing and the complainant gave evidence in court. You pleaded guilty only after the commencement of cross examination of the complainant. The complainant has already relieved her traumatic ordeal while giving evidence in court. She broke down many occasions during the course of her testimony. Therefore, I do not find that your plea of guilty has much mitigatory value at this stage of this proceedings.
22. Section 4 (2) (i) of the Sentencing and Penalties Act states that the sentencing court must consider the previous character of the offender in sentencing.
23. Section 5 of the Sentencing and Penalties Act has stipulated the factors in which the court could consider when determining the character of an offender, where it states that:

*“In determining the character of an offender a court may consider (amongst other matters) –*

*a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions recorded against the offender,*

*b) the general reputation of the offender, and*

*c) any significant contribution made by the offender to the community, or any part of it,”*

24. According to Sections 4 (2) (i) and 5 of the Sentencing and Penalties Act, not only the previous convictions but also previous findings of guilt of an offender can be considered, in order to determine the character of the offender. The sentencing court is allowed to consider the numbers of the previous convictions, their seriousness, the date of those previous convictions, their relevancy and their nature in order to determine the character of the offender. According to Section 5 (a) of the Sentencing and Penalties Act, the sentencing court could consider the record of previous convictions irrespective of the date of such convictions. The time gap between the

previous conviction and the present offence facilitates the court to properly determine the character of the offender.

25. According to the report of the previous convictions, you have been adversely reported with 25 previous convictions between the periods of 1986 to 1993. You have committed the first count of this series of offending in 2005, that is nearly twelve (12) years after your last recorded previous conviction. Apart from your family and personal circumstances, I do not find in your submission in mitigation, any information about your general reputation or any significant contribution that you have made to the community. Therefore, I do not find any significant mitigatory value in your previous character, though you are entitled for some discount on the basis of the time gap between your last previous conviction and the present offence.
26. In view of the above discussed aggravating circumstances, I increased four (4) years to reach an interim imprisonment of eighteen (18) years. I reduce one year for your plea of guilty and the previous character, making the final aggregate sentence of seventeen (17) years imprisonment.
27. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find sixteen (16) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of sixteen (16) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

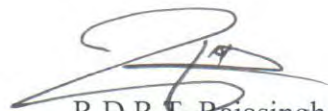
### **Head Sentence**

28. Accordingly, I sentence you for a period of **seventeen (17) years imprisonment** as an aggregate sentence for one count of Indecent Assault on Females, contrary to Section 154 of the Penal Code, one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (b) (i) of the Crimes Act, one count of Attempted Rape, contrary to Section 151 of the Penal Code, three counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, and one count of Rape, contrary to Section 207 (1) and 2 (c) of the Crimes Act. I further order that you are not eligible for any parole for a **period of sixteen (16) years**.

### Actual Period of Sentence

29. You have been in remand custody for this case for a period of two (2) months and twenty six (26) 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 three (3) months as a period of imprisonment that have already been served by you.
30. Accordingly your actual sentencing period is **sixteen (16) years and nine (9) months** of imprisonment, with **fifteen (15) year and nine (9) months** of non-parole period.
31. Since this incident involves with 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 the accused 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 competent court varies or suspends it. Furthermore, if you breach this restraining order, you will be charged and prosecuted for an offence pursuant of Section 77 of the Domestic Violence Act.
32. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
**Judge**

At Suva  
20<sup>th</sup> April 2018

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