

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

**Criminal Case No. HAC 370 of 2018**

**BETWEEN** : STATE

**AND** : JAI RAJ NAICKER

**Counsel** : Mr Y Prasad and Ms S Swastika for the State  
Ms S Prakash for the Accused

**Dates of Hearing** : 1 -2 May 2019

**Date of Sentence** : 8 May 2019

**SENTENCE**

- [1] Jai Raj Naiker, you were charged with two counts of rape and one representative count of sexual assault. The victim is your stepdaughter and niece – your brother’s daughter. The sexual abuse started in 2017 when the victim was 12 years old. She lived with you together with her mother and four siblings. The abuse continued for about 1 year and 9 months until the victim reported the abuse to her school teacher in September 2018.
- [2] After a two-day trial, this Court found you guilty of all three charges. I now pronounce your sentence.
- [3] The maximum punishment that this Court can impose for rape is life imprisonment. The maximum penalty prescribed for sexual assault is 10 years’ imprisonment. For the tariffs, I am guided by the decisions in Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014); Aitcheson v State [2018] FJSC 29;

CAV0012.2018 (2 November 2018); and State v Laca - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012).

- [4] In the present case, a child was raped, not once but twice by her guardian in her home. Not only she was raped, she was subjected to constant sexual abuse by way of fondling or groping of her breasts and private parts over a period of time. The victim in her evidence said that you treated her as she was your wife. You indeed made her an object of your lust during the offending period.
- [5] You have chosen not to take any responsibility for your actions or to explain your conduct. There is very little remorse from you.
- [6] I acknowledge that you come from a socio-economic disadvantaged background, that is, you received very little formal education, you worked as a labourer for a construction company earning a weekly wages of about \$320.00, you had a family of five children and a partner to support, you resided in a house with a basic structure in a rural community and you did not have basic facilities such as electricity. But none of these factors justify your conduct of sexually abusing a child that was under your care and protection. Poverty is not a licence to sexually abuse a child.
- [7] You are a matured adult of 38 years of age. You should have known the consequences of sexually abusing your stepdaughter. Apart from your previous good character, there are little mitigating factors. I give you credit for your previous good character.
- [8] On the other hand, your sentence must reflect the gravity of your offending against a child. The victim was under the age of 13 years when you had sexual intercourse with her. In her evidence, she described her experience as painful. She was subjected to further sexual assault and digital rape. You abused her for a period of time with impunity by using threats to physically harm the family by poisoning their meals if she reported the abuse to anyone. You have not only caused physical harm but psychological harm to the child victim. The trust that you breached is permanent. These factors aggravated your offending significantly.

- [9] Your conduct is appalling and sickening and must be denounced in the strongest terms. Your sentence must reflect the principle of deterrence, both personal and general.
- [10] For each count of rape, you are sentenced to 16 years' imprisonment and for sexual assault you are sentenced to 3 years' imprisonment, to be served concurrently. The total sentence is 16 years' imprisonment. You have already served nearly 8 months in custody while on remand. I take this period into account and fix a term of 12 years for you to serve before eligible for parole.
- [11] To protect the victim, I order that you be subject to a permanent domestic violence restraining order with no contact and non-molestation conditions for the rest of your life.
- [12] You have a right of appeal to the Court of Appeal within 30 days.



A handwritten signature in blue ink, consisting of a stylized 'D' and 'G' followed by a horizontal line.

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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