

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

**CRIMINAL CASE NO: HAC 19 of 2017**

**BETWEEN:**

**STATE**

**PROSECUTION**

**AND:**

**ERONI RATUDOI**

**ACCUSED PERSON**

**Counsel:**

Ms. A. Vavadakua for State

Ms. S. Devi with Co- Counsel Ms. K. Marama for Accused

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| <b><u>DATE OF HEARING:</u></b>            | 11 <sup>th</sup> February 2019 |
| <b><u>DATE OF CLOSING SUBMISSION:</u></b> | 12 <sup>th</sup> February 2019 |
| <b><u>SUMMING UP:</u></b>                 | 12 <sup>th</sup> February 2019 |
| <b><u>JUDGMENT:</u></b>                   | 12 <sup>th</sup> February 2019 |
| <b><u>SENTENCE:</u></b>                   | 13 <sup>th</sup> February 2019 |

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**SENTENCE**

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1. The name of the complainant is suppressed.
2. Mr. Eroni Ratudo, you stand convicted for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offence are that:

***THIRD COUNT***

***Statement of Offence***

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

*Particulars of Offence*

**ERONI RATUDOI**, between 01 November 2015 to 30 November 2015, at Levuka in the Eastern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

3. It was proved at the conclusion of the hearing that you have taken the complainant to a hotel at Levuka in the month of November 2015. You are the biological father of the complainant. She is your elder daughter. The complainant had been attending at St John's high school in Levuka at that time. You had gone to Levuka to pick her from the school and take her back home for the third term school vacation. You have spent a night at the Royal Park Hotel, where you have penetrated into the vagina of the complainant with your penis without her consent. The complainant was fifteen (15) years old at that time.
4. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a child victim and the perpetrator is closely related to the child victim. This is a case of incestuous father, using his own daughter for 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.
5. Parents are the most trusted and dependable persons that a child has in his/her growing years. Turning that trusted dependable person into a monstrous demon who penetrated in to the innocent childhood of the child and destroy it with his own lustful sexual satisfaction, would undoubtedly jeopardize the child entire future life. Therefore, incest is a rape by extortion, in which a child's very childhood becomes a weapon used to control her. Hence, I find the rape in this nature is a very serious crime.
6. The Fiji Court of Appeal in **Subramani v State [2018] FJCA 82; AAU0112.2014 (1 June 2018)** has discussed the appropriate objective of the sentencing of offenders who

have committed offences of gross sexual exploitation of young children, where the Fiji Court of Appeal held that:

*“The offence of rape of young person related to the appellant is a serious offence. In this case the complainant was 11 years old and the appellant was her grand uncle (her grandfather’s brother). The authorities indicate that whilst rehabilitation is a factor to be considered when fixing a non-parole period, so also are deterrence, denunciation, condign punishment and community protection and expectations. The appropriate person to balance these objectives in each case is the sentencing judge. In the present case, given the age of the appellant, re-habilitation is not a particularly relevant matter whereas the expectations of the community and the protection of young girls should be reflected in both the head sentence and the non-parole term so as to send a strong signal that the courts will impose appropriate sentences in such cases.”*

7. The Supreme Court of Fiji in **Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)** held that the increasing prevalence of the crimes of this nature demands the courts to consider widening the tariff for the rape against children. The Supreme Court of Fiji held that:

*“The increasing prevalence of these crimes, crimes characterized 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**

8. In view of the serious nature of the crime, 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 harsh and long custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the civilized society denounce such crimes without any reservation.

### Tariff

9. Hon. Chief Justice Gates in Aitcheson v State ( Supra) held that the tariff for rape of a child is between 11 - 20 years' imprisonment period.

### Level of Harm and Culpability

10. The complainant was fifteen (15) years old when this incident took place. The court had the opportunity to observe the complainant while she gave evidence in court. The complainant was slow and struggled to retain her focus during the course of giving her evidence. It is obvious from her demeanour that she does not want to recall or revisit those traumatic memories in the life. The complainant broke down many times and was in tears while giving evidence.
11. The victim impact report provides the details of the extent of the emotional and psychological effect that this offence has caused to the complainant. It has adversely changed the complainant to a withdrawn, scared person. In view of these facts, I find the level of harm in this offence is significantly high.
12. It was proved that you have bought two bottles of beer and she had also consumed beer. You being the father of the complainant, did not intervene and stop her drinking beer. She was a 15 years old young juvenile at that time. Instead, you have committed this offence after you and the complainant consumed beer. Therefore, I am satisfied that this is a premeditated crime. I accordingly find the level of culpability in this offence is also significantly high.

### Starting Point

13. Having taken into consideration, the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, I select 15 years as the starting point.

### Aggravating and Mitigating Factors

14. You have breached the trust that the complainant had in you as her father. Instead of caring and looking after your own daughter, you have manipulatively used the opportunity to satisfy your lustful sexual gratification. You used the vulnerability of this complainant to fulfill your most disgraceful sexual desire. The age difference between you and the complainant is substantially high. The complainant was 15 years old and you were 65 years old at the time this offence was taken place. By committing this crime, you have exposed this young complainant to the sexual activities, thus preventing her to have a natural growth of maturity in her life. I consider these grounds as aggravating factors in this offending.
15. The learned counsel for the defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
16. The learned counsel for the defence in her mitigation submissions further stated that you are old and suffering from various medical conditions. Justice Goundar in State v Vukici [2018] FJHC 1193; HAC104.2017 (14 December 2018) found that the advanced age and physical disabilities should not be considered as a reason to reduce or lenient sentence for an offenders of this nature. The physical disabilities and the advanced age can be properly monitored in the prison. Therefore, I do not find your advanced age and physical disabilities as mitigating factors in this sentencing.
17. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. I take into account the fact that you have no previous criminal records. Meantime, I am mindful of the fact that you had been a

dominating and abusive father towards your family as at one instance you have chased the family away from the home. Taking these reasons in to consideration, I do not find that you are entitled for a discount for your previous character.

18. In view of the reasons discussed above, I increase further two (2) years for the aggravating factors to reach seventeen (17) years. In view of above discussed reasons in relation to mitigation and the outrageous nature of this crime, I do not find any mitigatory ground in your favour. I accordingly reach a period of seventeen (17) years imprisonment as your final sentence.
19. Having considered the seriousness of this crime, the purpose of this sentence, your age and physical disabilities, I find fifteen (15) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of fifteen (15) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### **Head Sentence**


20. Accordingly, I sentence you for a period of **seventeen (17) years** imprisonment for the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. Moreover, you are not entitled to any parole for a period of **fifteen (15) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

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

21. You have been in remand in custody for this case for a period of nearly one (1) year and ten (10) months 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 one (1) year and ten (10) months as a period of imprisonment that have already been served by you.
22. Accordingly, the actual sentencing period is **fifteen (15) years and two (2) months** imprisonment with non-parole period of **thirteen (13) years and two (2) months**.

23. 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 you with standard non-molestation conditions and no contact conditions pursuant to section 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 to section 77 of the Domestic Violence Act.
24. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

At Labasa  
13<sup>th</sup> February 2019

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