

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

**Crim. Case No: HAC 70 of 2022**

**STATE**

vs.

**SEMESA NAULAGO**

**Counsel:** Ms. A. Vavadakua for the State  
Mr. K. Chang for Accused

**Date of Hearing:** 13<sup>th</sup> June 2022

**Date of Closing Submission:** 14<sup>th</sup> June 2022

**Date of Judgment:** 21<sup>st</sup> June 2022

**Date of Sentence:** 22<sup>nd</sup> June 2022

---

**SENTENCE**

---

1. Mr. Semesa Naulago, you stand convicted for one count of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act. Both counts carry the maximum sentence of life imprisonment.

2. It was proved during the hearing that you had penetrated the vagina of the Complainant with your tongue and then with your penis. The Complainant was ten years old child. She is related to you as you are a cousin of her father.
3. This is a case of sexual exploitation of a young child by a known person within her dwelling environment. Sexual exploitation of children within their own domestic environment has become a social menace. The social enigma of abusing children for sexual gratification needs to address promptly and effectively. Therefore, I find this is a grave crime.
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 civilised society denounces such crimes without any reservation.
5. These two offences are founded on the same series of offences with similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
6. Gates CJ in Aitchison v State ([2018] FJSC 29; CAV0012.2018 (2nd of November 2018)) held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
7. The Victim Impact Report states this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence. Therefore, I find the level of harm in this offence is significantly high.
8. You had meticulously executed this crime when she came to the shop when no one was present. She was not in a position to escape or seek assistance from others. You have

manipulatively obtained an advantage of her vulnerability by committing this crime. I accordingly find that the level of culpability is exceedingly high in this crime, requiring a starting point closer to the higher end of the tariff range.

9. Considering the serious nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select 15 years as the starting point.
10. The Complainant is related to you. You are her uncle. You had abused that trust and confidence she had in you as an elderly relative. The age difference between you and the Complainant is substantially high. You have exposed this ten-year-old child to sexual activities by committing this crime at a very young age. I consider these reasons as aggravating factors of this offence.
11. The learned Counsel for the Defence, in his mitigation submissions, submitted your personal and family background, which has no mitigatory value.
12. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. I find that your previous good character, especially the fact that you have not been tainted with any prior conviction for an offence of sexual nature, would have allowed you to freely move around in the community without any suspicion of risk. The community has perceived you as a man of good character, not a child pedophile, and allowed you to be freely with your female family members. Moreover, there is no suggestion that you have significantly contributed to the community or have any reputation in the community as per Section 5 of the Sentencing and Penalties Act. 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 increase further two (2) years for the aggravating factors to reach seventeen (17) years. Because of your previous character, I reduce one (01) year. Accordingly, I reach sixteen (16) years imprisonment as your final sentence.

14. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find fourteen (14) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### **Head Sentence**

15. Accordingly, I sentence you to a period of sixteen (16) years imprisonment as an aggregate sentence for the two counts of Rape as charged in the information. Moreover, you are not entitled to parole for fourteen (14) 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 four (4) months and six days before the sentence as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider four (4) months as a period of imprisonment you have already served.
17. Accordingly, the actual sentencing period is **fifteen (15) years and eight (08) months** imprisonment with a non-parole period of **thirteen (13) years and eight (08) months**.
18. Since this incident involves 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 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 is varied or suspended. 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.



19. Thirty (30) days to appeal to the Fiji



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

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

**At Suva**

22<sup>nd</sup> June 2022

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.