

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

**Crim. Case No: HAC 76 of 2022**

**STATE**

vs.

**MOHAMMED IFTIKHAR ALI**

**Counsel:** Ms. J. Fatiaki for the State  
Mr. J. Reddy with Ms. S. Narayan for Accused

**Date of Hearing:** 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> July 2023

**Date of Closing Submission:** 31<sup>st</sup> July 2023

**Date of Judgment:** 15<sup>th</sup> August 2023

**Date of Sentence:** 05<sup>th</sup> September 2023

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**SENTENCE**

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1. The name of the Complainant is suppressed and hereby referred to as **AB**.
2. On the 15th of August 2023, this Court found you guilty of one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum punishment of life imprisonment and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes

Act, which carries a maximum punishment of ten years imprisonment and convicted of the same accordingly.

3. You committed these three offences against the Complainant on an unknown date between the 1st of August 2020 and the 31st day of August 2020 at Lulu Place in Davuilevu. The Complainant is your neighbour and came to your house that day to play with your daughter. You then asked your daughter to go and buy something from the shop. No sooner did your daughter leave home than you started touching the breasts of the Complainant, who was 13 years and 6 months old then. You then touched her vagina with your fingers. Afterwards, you removed her clothes and penetrated her vagina with your penis without her consent. When you saw your daughter was returning, you stopped it and threatened the Complainant not to tell anyone about this incident. In February 2021, it was revealed that the Complainant was six months pregnant. She subsequently gave birth to a child in May 2021. The DNA analysis test done by the Police Forensic Unit confirmed that you are the child's biological father.
4. This is a case of sexual exploitation of a young girl by a known person within her dwelling environment. Sexual exploitation of children within their 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 the objective seriousness of the crime extremely high.
5. 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.
6. These three offences are founded on the same series of offences with similar characters. Therefore, I find it appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.

7. The maximum penalty for Rape is life imprisonment. Gates CJ in **Aitcheson 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.
8. The maximum penalty for Sexual Assault is ten years imprisonment. Justice Madigan in **State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (the 14th of November 2012)** has expounded the tariff for the offence of Sexual Assault as between 2 years to 8 years imprisonment.
9. 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.
10. The Victim Impact Report states this crime has adversely affected the Complainant. According to the Victim Impact Report, this crime has shattered her self-confidence, making her withdrawn. This crime made her pregnant, and eventually, she gave birth to a child. Therefore, I find the level of harm in this offence is significantly high.
11. You had meticulously executed this crime, sending your daughter to the shop to create an opportune moment to unleash this heinous crime. The Complainant was alone and unable to escape or seek assistance. You had threatened her, stating that you would do something if she informed someone about this incident. 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.
12. Considering the serious nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select sixteen (16) years as the starting point.

13. The Complainant is your neighbour's daughter. She called you Uncle. You had abused that trust and confidence she had in you as an elderly neighbour. The age difference between you and the Complainant is substantially high. You have exposed this Complainant to sexual activities by committing this crime at a very young age. I consider these reasons as aggravating factors of this offence.
14. In mitigation submissions, the learned Counsel for the Defence submitted your personal and family background, which has no mitigatory value.
15. 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 since you have not been tainted with any prior conviction for an offence of a sexual nature, would have allowed you to freely move around in the community, including the children, without any suspicion of risk. The Complainant's family had perceived you as a man of good character, not a child paedophile, and allowed the Complainant to visit your house. 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.
16. In view of the reasons discussed above, I increased further two (2) years for the aggravating factors to reach eighteen (18) years. Because of your previous character, I reduced one (01) year. Accordingly, I reach seventeen (17) years of imprisonment as your final sentence.
17. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find fifteen (15) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for fifteen (15) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Head Sentence

18. Accordingly, I sentence you to a period of seventeen (17) years imprisonment as an aggregate sentence for one count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Act and two counts of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act. Moreover, you are not entitled to parole for fifteen (15) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Actual Period of the Sentence

19. You have been in remand custody for this case for nearly two (2) months before the sentence, as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider two (2) months as a period of imprisonment you have already served.

20. Accordingly, the actual sentencing period is **sixteen (16) years and ten (10) months** imprisonment with a non-parole period of **fourteen (14) years and ten (10) months**.

21. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

### At Suva

05<sup>th</sup> September 2023

### Solicitors

Office of the Director of Public Prosecutions for the State.

Jiten Reddy Lawyers for the Accused.