

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 010 of 2021**

**STATE**

vs.

**TEVITA SADE**

<b>Counsel:</b>	Mr. W. Thaggard with Mr. J. Nasa for the State Ms. K. Marama for Accused
<b>Dates of Hearing:</b>	15 <sup>th</sup> , 16 <sup>th</sup> January 2024 and 20 <sup>th</sup> May 2024
<b>Date of Closing Submission:</b>	13 <sup>th</sup> June 2024
<b>Date of Judgment:</b>	20 <sup>th</sup> June 2024
<b>Date of Sentence:</b>	15 <sup>th</sup> August 2024

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**SENTENCE**

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1. On the 20th of June 2024, the Court found you guilty and convicted of one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, which carries a maximum penalty of ten years imprisonment and one count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment.

2. It was established that you had indecently and unlawfully touched the body of the Complainant and then penetrated her vagina with your penis without her consent during the period between the 1st day of January 2017 and the 31st day of December 2018. The Complainant is your stepdaughter and is intellectually disabled. The Complainant was born on the 10th of May 1999. Hence, she was seventeen years old in 2017 and turned eighteen on the 10th of May 2017.
3. Rape is one of the most humiliating and distressing crimes. It becomes more serious when involved with a young person in her domestic environment. Hence, I find that Rape of this nature is a grave crime.
4. Given the serious nature and the prevalence of crimes of this nature, 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 society denounces such crimes without any reservation.
5. Gates CJ in *Aitcheson v State* (supra) held that the tariff for Rape of a child is between 11 -20 years' imprisonment period. The tariff for the Rape involved with an adult person ranges between 7 years to 15 years. It was held in **State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011** (the 14th of November 2012) that the tariff for the offence of Sexual Assault is between 2 years to 8 years imprisonment.
6. These two offences are founded on the same series of offences. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
7. The Victim Impact Report details the adverse effect these offences have had on the young, intellectually disabled Complainant. This offending has caused her significant hardship,

especially within her family, which I consider in determining the level of harm in this matter.

8. You breached her trust in you as her stepfather. The age gap between you and the Complainant is significant. I consider these factors to be aggravating circumstances.
9. In the mitigation submissions, the learned Counsel for the Defence submitted your personal and family background; I do not find any mitigatory value in your family background.
10. You are not a first offender. There is no evidence or information before this Court to consider your general reputation in society and also any significant contribution you have made to the community. Considering these reasons, you are not entitled to a discount on your previous character.
11. Having considered the seriousness of the crime, the purpose of the sentence, the level of harm, and the aggravating factors, I sentence you to thirteen (13) years of imprisonment as an aggregate sentence for these two offences.
12. Considering the seriousness of this crime, the purpose of this sentence, your age, and opportunities for rehabilitation, I find that eleven (11) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


### **Head Sentence**

13. Accordingly, I sentence you to a period of thirteen (13) years imprisonment as an aggregate sentence for the one count of Sexual Assault and one count of Rape as charged in the Information. Moreover, you are not entitled to parole for eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

**Actual Period of the Sentence**

14. You have been in custody for this case for nearly seventy (70) days, as the Court did not grant you bail. Under Section 24 of the Sentencing and Penalties Act, I consider three ( 03) months to be a period of imprisonment you have already served.
15. Accordingly, the actual sentencing period is **twelve (12) years and nine (09) months** imprisonment with a non-parole period of **ten (10) years and nine (09) months**.
16. 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**

15<sup>th</sup> August 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.