



removed her clothes. You then penetrated her vagina with your penis without her consent while your Accomplice held her hands and covered her mouth. You and the Complainant are cousins.

3. Offences of sexual nature are humiliating and distressing crimes. It violates the physical self and destroys a person's personal dignity and self-autonomy. This is a case of a male cousin using his young female cousin for surrogate sexual gratification. The social enigma of abusing children for sexual gratification by their family members needs to address promptly and effectively. Therefore, I find this a grave crime.
4. In view of the severe nature 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 civilized society denounces such crimes without any reservation.
5. Gates CJ in Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (the 2nd of November 2018) held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period. However, this incident occurred in November 2013, and the applicable tariff for the Rape of a child was 10 to 14 years imprisonment. (*vide Mutch v State Cr. App. AAU 0060/99, Mani v State, Cr. App. No. HAA 0053/021, State v Saitava, Cr. Case No. HAC 10/07, State v Tony Cr. App. No. HAA 003/08, State v Raj [2010] FJHC 198; HAC009.2010 (the 10th of June 2010)*)
6. The State opted not to file any Victim Impact Report. Hence, there is no evidence or facts before the Court to determine the level of harm caused to the Complainant.
7. This is a gang raped, violently unleashed on the Complainant by you and your Accomplice. Your Accomplice held her hands and covered her mouth, preventing her from moving or asking for help while you committed this crime. Hence, I am satisfied you had subdued her

resistance using your and your Accomplice's physical strength. I accordingly find that the level of culpability is high in this crime.

8. Having considered the seriousness of the crime, the purpose of the sentence, and the level of culpability, I select eleven (11) years as the starting point.
9. The Complainant is your cousin. You had abused the trust and relationship she had in you as her cousin. By committing this crime, you have exposed this fifteen-year-old child to sexual activities at a very young age, thus preventing her from having a natural growth of maturity in her life. I consider these reasons as aggravating factors of this offence.
10. In her mitigation submissions, the learned Counsel for the Defence submitted your personal and family background, which has no mitigatory value.
11. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. 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. Considering your previous good character, you are entitled to a certain amount of discount.
12. This offence was committed in November 2013, when you were a 19 years old young man. You are now 28 years old married man. Unfortunately, this matter had progressed at a snail's pace, consuming nearly nine years to conclude the hearing. The Prosecution submitted that you also had contributed substantially for this delay. The trial had to vacate on several occasions on the applications made by you. Moreover, you had been absconding the Court on several occasions and delayed the progress of this proceedings. However, it was not only you, the Prosecution and also some other factors contributed to this delay. You had been enduring this delay while awaiting the outcome of this case. Therefore, the Court must consider this delay of 9 years in your favour in sentencing.



13. In view of the reasons discussed above, I increased one (01) year for the aggravating factors to reach an interim period of twelve (12) years. Because of your previous good character, I give you two (02) years discount and three (3) years discount for the delay of 9 years, making seven (07) 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 four (04) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for four (04) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### Head Sentence

15. Accordingly, I sentence you to seven (07) years imprisonment for this offence of Rape as charged. Moreover, you are not entitled to parole for four (04) 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 three (03) months and twenty-two (22) days before the sentence. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider four (04) months as a period of imprisonment you have already served.
17. Accordingly, the actual sentencing period is **six (06) years and eight (08) months** imprisonment with a non-parole period of **three (03) 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 according 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 breach this

restraining order, you will be charged and prosecuted for an offence under section 77 of the Domestic Violence Act.

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



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe", written over a dotted line.

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

**At Suva**

10<sup>th</sup> March 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.