

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

**Crim. Case No: HAC 265 of 2022**

**STATE**

vs.

**JEREMAIA ROBA**

**Counsel:** Ms. K. Semisi for the State  
Ms. M. Singh for Accused

**Date of Hearing:** 14<sup>th</sup> February 2023

**Date of Closing Submission:** 16<sup>th</sup> February 2023

**Date of Judgment:** 03<sup>rd</sup> March 2023

**Date of Sentence:** 22<sup>nd</sup> March 2023

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**SENTENCE**

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1. Mr. Jeremaia Roba, on the 3rd of March 2023, this Court found you guilty of one count of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act and convicted you to the same accordingly. In addition, on the 3rd of October 2022, you pleaded guilty to two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Being satisfied that you have fully comprehended the legal effect of your plea and that it was voluntary and free from force and influence, I now convict you of the two offences of Sexual Assault as charged in the Information under counts one and two.

2. It was proved during the hearing that you had penetrated the vagina of the Complainant with your finger in 2020 when she came to attend a funeral in the village. She came to your house to shower as the funeral house was crowded with relatives. You found her inside your home, approached her from behind, and penetrated her vagina with your fingers without her consent. The Complainant is your niece.
3. The Summary of Facts you admitted in Court states that on another occasion in 2020, you had approached the Complainant while she was sleeping and then touched her breasts. Once again, in 2020, you kissed her lips while she was asleep. The Complainant had moved to Accused's house from her home island to attend school.
4. 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 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 civilized society denounces such crimes without any reservation.
6. These three offences are founded on the same series of offences with similar characters. Therefore, imposing an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act is appropriate.
7. The maximum penalty for Rape is life imprisonment. 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.

8. The maximum penalty for Sexual Assault is ten years imprisonment. Justice Madigan in **State v Epli 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 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.
11. You had meticulously executed this crime of Rape when Complainant was alone and unable to escape or seek assistance. I accordingly find that the level of culpability is exceedingly high in this crime.
12. Considering the serious nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select fourteen (14) years as the starting point.
13. 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 child 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 her 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 sexual nature, would have allowed you to freely move around in the family, including the children, without any suspicion of risk. The family had perceived you as a man of good character, not a child paedophile, and allowed you to be free with your young female family members. Moreover, it was submitted that you had been the spokesperson for the village church. It is astounding to apprehend that a person who held such a position in the church had manipulatively abused this young Complainant for his surrogated sexual gratification. 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. You pleaded guilty to two counts of Sexual Assault at the first available opportunity. Nevertheless, the Complainant had to give evidence, recalling her traumatic ordeal. Yet, I find your early guilty plea entitles a discount as you had shown a certain amount of remorse by admitting your guilty to those two counts.
17. In view of the reasons discussed above, I increased further by three (3) years for the aggravating factors to reach seventeen (17) years. Because of your previous character, I reduced one (01) year. I further reduced one year for your early plea of guilty. Accordingly, I reach fifteen (15) years of imprisonment as your final sentence.
18. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find thirteen (13) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Head Sentence


19. Accordingly, I sentence you to a period of fifteen (15) years imprisonment as an aggregate sentence for one count of Rape contrary to Section 207 (1) (2) (b) 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 thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Actual Period of the Sentence

20. You have been in remand custody for this case for nearly seven (07) months and twenty (20) days before the sentence, as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider eight (08) months as a period of imprisonment you have already served.
21. Accordingly, the actual sentencing period is **fourteen (14) years and four (04) months** imprisonment with a non-parole period of **twelve (12) years and four (04) months**.
22. 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 breach this restraining order, you will be charged and prosecuted for an offence under section 77 of the Domestic Violence Act.

23. 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**

22<sup>nd</sup> March 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.