

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

**Crim. Case No: HAC 04 of 2021**

**STATE**

vs.

**MOSESE NAVETAU**

**Counsel:** Ms. A. Vavadakua for the State  
Ms. S. Devi for Accused

**Date of Hearing:** 07<sup>th</sup> and 08<sup>th</sup> August 2023

**Date of Closing Submission:** 08<sup>th</sup> August 2023

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

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

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**SENTENCE**

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1. The name of the Complainant is suppressed and referred to as **AB**.
2. Mr. Mosese Navetau, the Court found you guilty of one count of Rape, contrary to Section 207 (1) and (2) (a) (3) of the Crimes Act, and two counts of Rape, contrary to Section 207 (1) (2) (a) of the Crimes Act.

3. This is a case of sexual exploitation of a young girl by a known person. Sexual exploitation of children by known persons has become a social menace. The social enigma of abusing children for sexual gratification must be addressed promptly and effectively. Therefore, I find the objective seriousness of the crime extremely high.
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 civilized society denounces such crimes without any reservation.
5. 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.
6. 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.
7. All three counts are founded on the same series of offending of the same and similar characters. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
8. The Victim Impact Report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence, and she has become withdrawn. Therefore, I find the level of harm in this offence is significantly high.

9. You had meticulously executed this crime of Rape when the Complainant was alone and had no opportunity to escape or seek help. You had threatened her not to tell anyone after committing these crimes. I accordingly find that the level of culpability is high in this crime.
10. Considering the serious nature of this offence, the purpose of the sentence, the level of harm and the level of culpability, I select fourteen (14) years as the starting point.
11. The Complainant considered you as a respected elder in the village. She saw you as a person who speaks of God and spiritual values. You had abused that trust and confidence she had in you. The Complainant lived with her grandparents since her mother is married and lived in another village. You exploited her vulnerability. 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.
12. 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 move around freely without any suspicion of risk. The Complainant had perceived you as a man of good character, not a child paedophile. 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 increased further by three (03) years for the aggravating factors to reach seventeen (17) years. Because of your previous character, I reduced one (01) year. Accordingly, I reach sixteen (16) years of 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 aggregated sentence for one count of Rape contrary to Section 207 (1) and (2) (a) (3) of the Crimes Act and two counts of Rape, contrary to Section 207 (1) (2) (a) of the Crimes Act. 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 two (02) months before the sentence. In Pursuant to Section 24 of the Sentencing and Penalties Act, I consider two (02) months as a period of imprisonment you have already served.
17. Accordingly, the actual sentencing period is fifteen (15) years and ten (10) months' imprisonment with a non-parole period of thirteen (13) years and ten (10) months.
18. 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> September 2023

### Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for Accused.