

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

**Crim. Case No: HAC 163 of 2023**

**STATE**

vs.

**RAFAELE DAU**

**Counsel:** Ms. K. Dugan for the State  
Ms. R. Nabainivalu for Accused

**Dates of Hearing:** 18<sup>th</sup> November 2024

**Date of Closing Submission:** 19<sup>th</sup> November 2024

**Date of Judgment:** 26<sup>th</sup> November 2024

**Date of Sentence:** 29<sup>th</sup> November 2024

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**SENTENCE**

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1. Mr. Rafaelé Dau, on the 26th of November 2024, this Court found you guilty of one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009, which carries a maximum sentence of life imprisonment.
2. It was proved during the hearing that you had penetrated the vagina of the Complainant with your penis in one of the bedrooms of the Complainant's grandmother's house on the 8th of March 2022. You went to this house to celebrate Mothers' Day with your church group, which the Complainant was a member of.

3. This is a case of sexual exploitation of a young teenage girl by a known person within her social surroundings. Sexual exploitation of children within their social and family environment has become a social menace. The social enigma of abusing children for sexual gratification needs to be addressed promptly and effectively. Therefore, I find the objective seriousness of this 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 (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. 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. You made her pregnant, making the Complainant a teenage single mother. The Victim Impact Report explained the trauma, both physically and psychologically, the Complainant is still going through due to this crime and subsequent imposed single motherhood. Therefore, the level of harm in this offence is significantly high.
8. You had meticulously executed this crime by asking the Complainant to come and look for your mobile phone charger in the room. When she was alone in the room, you carried out

this crime, overpowering her with your superior physical strength and position. Considering these reasons, the level of culpability of this crime is exceedingly high.

9. Considering the serious nature of this offence, the purpose of the sentence, the level of harm, and the level of culpability, I find it necessary to select a starting point close to the higher end of the tariff range. Accordingly, I selected 15 years as the starting point.
10. The Complainant is a young member of your church group and has known to you for a long time. You had abused that trust and confidence she had in you as an elderly church member. The age difference between you and the Complainant is substantially high. I consider these reasons to be an aggravating factors in this offence.
11. In her mitigation submissions, the learned Counsel for the Defence submitted your personal and family background, which has no mitigatory value.
12. You are not a first offender. However, your only previous conviction in relation to a property crime was recorded in 2011. 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 any substantial mitigatory value in your previous character.
13. In view of the reasons discussed above, I increased further two (2) years for the aggravating factors to reach seventeen (17) years. Because of your previous character, I reduced one (01) year. Accordingly, I have reached sixteen (16) years of imprisonment.
14. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find fourteen (14) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for fourteen (14) years under Section 18 (1) of the Sentencing and Penalties Act.

**Head Sentence**

15. Accordingly, I sentence you to a period of sixteen (16) years imprisonment for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009, as charged in the Information. Moreover, you are not entitled to parole for fourteen (14) years according to Section 18 (1) of the Sentencing and Penalties Act.

**Actual Period of the Sentence**

16. You were in remand custody for this case for nearly fifteen (15) days before the sentence, as the Court did not grant you bail. According to Section 24 of the Sentencing and Penalties Act, I consider one (01) month as a period of imprisonment you have already served.

17. Accordingly, the actual sentencing period is **fifteen (15) years and eleven (11) months** imprisonment with a non-parole period of **thirteen (13) years and eleven (11) months**.

18. 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".

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

**At Suva**

29<sup>th</sup> November 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.