

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION.

Criminal Case No. HAC 399 of 2012

BETWEEN

STATE

AND

WASEROMA KOROI

BEFORE THE HON. JUSTICE PAUL K. MADIGAN

Counsel: Ms. A. Vavadakua with Ms. W. Elo for the State
Mr. J. Savou with Mr A. Chand (L.A.C.) for the accused

Dates of hearing: 17, 18 March 2014

Date of judgment: 19 March 2014

JUDGMENT

[1] **Waseroma Koroi**, you have been charged with the following offences:

First Count

Statement of Offence

Rape: *Contrary to section 149 and 150 of the Penal Code [Cap 17]*

Particulars of Offence

Waseroma Koroi, *between the 1st day of January 2010 and the 31st day of January 2010 at Nayavu Village, Tailevu, in the Central Division had unlawful carnal knowledge of Niumai Wati without her consent.*

Second Count

Statement of Offence

Rape: *Contrary to section 207(1) and (2) (a) of the Crimes Decree 44 of 2009.*

Particulars of Offence

Waseroma Koroi, between the 1st day of February 2010 and the 31st day of February 2010, at Nayavu Village, Tailevu in the Central Division had carnal knowledge of Niumai Wati without her consent.

Third Count

Statement of Offence

Incest: *Contrary to section 223(1) of the Crimes Decree 44 of 2009.*

Particulars of Offence

Waseroma Koroi, between the 1st day of October 2011 and the 31st day of November 2011 at Nayavu Village, Tailevu in the Central Division had carnal knowledge of Niumai Wati who was to his knowledge related to him as his daughter.

- [2] In the unanimous opinion of three assessors you have been found not guilty of the first two counts of rape but guilty of the third count of incest.
- [3] The complainant in this case is mentally handicapped but gave evidence that was clear as far as the rapes were concerned but rather jumbled in other respects. She could not define dates clearly nor could she be sure about her residential movements. I could not help thinking that she had been “coached” to some degree. The evidence of consent was less than satisfactory, she was never asked directly if she consented or not.
- [4] In the premises I agree with the assessors’ opinions over the rape and find you not guilty of Counts one and two.

- [5] I believe the complainant and especially the secondary witness, Koini, that there was sexual activity between you and Niumai, and in the year 2011 as charged. I agree with the assessors again on their opinion for this count.
- [6] I find you not guilty of rape in Count 1 and in Count 2 and acquit you of those charges.
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- [7] I find you guilty of incest in Count 3 and convict you accordingly.
- [8] That is the judgment of the Court.

P.K. Madigan

Judge

At Suva

19 March 2014