

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 099 of 2013

STATE

V

SAKIUSA TOKALAU

Counsel: Ms A. Vavadakua for the State
Ms N. Nawasaitoga for the Accused

Date of hearing: 17 November 2014
Date of Judgment: 19 November 2014

JUDGMENT

Sakiusa Tokalau, you have been charged with the following offences:

FIRST COUNT**Statement of Offence**

RAPE : Contrary to 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Sakiusa Tokalau, on the 15th day of February 2012, at Nadawa in the Central Division, penetrated the vagina of XXXX, with his finger, without her consent.

SECOND COUNT**Statement of Offence**

SEXUAL ASSAULT: Contrary to 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Sakiusa Tokalau, on the 15th day of February 2012, at Nadawa in the Central Division, unlawfully and indecently assaulted XXXX, by touching her breasts.

THIRD COUNT**Statement of Offence**

SEXUAL ASSAULT: Contrary to 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Sakiusa Tokalau, between the 22nd day of December 2012 and the 31st day of January 2013, at Nadawa in the Central Division, unlawfully and indecently assaulted XXXX, by kissing her neck.

FOURTH COUNT**Statement of Offence**

SEXUAL ASSAULT: Contrary to 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Sakiusa Tokalau, between the 1st day of January 2013 and the 31st day of January 2013 at Nadawa in the Central Division, unlawfully and indecently assaulted XXXX, by fondling her breasts.

2. In the unanimous opinion of three assessors after trial you have been found not guilty of rape, but guilty of the three offences of sexual assault.
3. The victim aged 15 gave evidence that the accused, her stepfather, came to her room at night on the relevant date and awoke her by touching her breasts. He removed her panty and top and she felt something penetrating her vagina. He was dressed and it was not an object, he was kneeling beside her bed.
4. The accused in evidence admitted both to the Police and the Court that he touched her breasts but denied invading her sexually.
5. There can be no doubt whatsoever on his own admission that the elements of Count Two have been proved and I find him guilty of that charge and convict him accordingly.
6. In the girl's evidence she said she didn't like it and afterwards didn't enter the house if he was there and would ask a friend around so that she would not be alone.
7. The evidence of the girl was convincing, honest and compelling. I believed her evidence as she gave it and I was impressed with her reluctance to embellish it in any way. The circumstantial evidence of the penetration being by the accused's finger is

irresistible and I therefore reject the opinion of the assessors on Count One and find him guilty of the charge of rape. There was no evidence that the complainant had any negative feelings towards the accused which might lead her to make up her story.

8. I agree with the assessors on the Third and Fourth Counts of sexual assault. There was evidence from the victim that on this earlier occasion the accused has indecently touched her and I accept her evidence as I did on the first two counts.
9. In all matters I have directed myself on my own summing up and have applied the relevant stringent criminal test to prove the offences.
10. This is the judgment of the Court.



At Suva
19 November 2014

A handwritten signature in black ink, appearing to read "P.K. Madigan". The signature is stylized with a large, sweeping initial "P" and a long horizontal stroke.

P.K. Madigan
Judge