

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 70 & 71 of 2013

BETWEEN:

THE STATE

AND:

JALE MARIO

Counsel: Mr. S. Vodokisolomone for State
Mr. M. Fesiatu for Accused

Date of Hearing: 15-17 December 2014

Date of Judgment: 17 December 2014

JUDGMENT

[1] The Accused, Jale Mario is charged on four counts of rape and one count of indecent assault. The assessors expressed unanimous opinions that the Accused was guilty on all five counts.

[2] I direct myself in accordance with my summing up. I bear in mind that the prosecution carries the burden of proof to establish guilt beyond reasonable doubt. Although the Accused gave evidence, he bears no onus to prove anything.

- [3] Counts 1-3 relate to the complainant, Maria. Counts 4-5 relate to the complainant, Mere. It is not in dispute that both complainants were under the age of 13 years at the time of the alleged incidents and therefore they were incapable of giving consent to the alleged sexual acts. The issue is whether the alleged sexual act on each count was committed by the Accused.
- [4] Maria gave evidence that on two occasions (counts 1-2) the Accused had sexual intercourse with her, and on one occasion (count 3), the Accused penetrated her vagina with his tongue. On count 4, Mere said that the Accused fondled her breasts. Metonio witnessed this incident. On count 5, Mere said the Accused had sexual intercourse with her. The complainants did not report the incidents to anyone. They explained that the Accused who was their uncle had threatened to harm them if they complained to anyone. Eventually the complainants' mother managed to prod out of Maria regarding the incident alleged on count 3. This complaint was neither recent nor voluntary. For this reason, the compliant evidence is of no probative value. The medical evidence shows that the complainants hymen had been perforated and were not intact, which may indicate that penetration had occurred, but the evidence does not implicate the Accused to the alleged crimes. The Accused denies all the sexual allegations. I reject his evidence. He gave evidence based on selective memory and he did not struck me as a truthful witness.
- [5] When Maria, Mere and Metonio gave evidence, they struck me as honest and reliable witnesses. The inconsistencies pointed out by the defence in their evidence are not material inconsistencies. I accept the evidence of Maria and Mere that they did not complain to anyone because of the threats the Accused made to them. I believe Maria that on two occasions the Accused had sexual intercourse with her, and on one occasion the Accused penetrated her vagina with his tongue. I believe Mere that on one occasion the Accused fondled her breasts and on the second occasion the Accused had sexual intercourse with her. I believe Metonio when he said he saw the Accused's hands on Mere's breasts.

[6] On each count, I feel sure of the Accused's guilt and I find him guilty as charged on all five counts. Accordingly, the Accused is convicted on all five counts.



Daniel Goundar

JUDGE



At Labasa

17 December 2014

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused