

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. : HAC 140 OF 2012

STATE
-v-
PENI ULABALE

Counsel : **Ms. W. Elo with Uce for the State**
Ms. S. Nasedra for the Accused

Date of Trial : **20th – 21st August 2015**
Date of Summing Up: **24th August 2015**
Date of Judgment: **26th August 2105**

JUDGMENT

1. The Accused was charge with following Counts and tried before three Assessors.

Count 1
Statement of Offence

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

Particulars of Offence

PENI ULABALE on the 3rd day of October, 2012, at Tavua in the Western Division, unlawfully and indecently assaulted **Litiana Regu**, a 7 year old, by licking the vagina of the said **Litiana Regu** with his tongue.

Count 2
Statement of Offence

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


Particulars of Offence

PENI ULABALE on the 3rd day of October, 2012, at Tavua in the Western Division, unlawfully and indecently assaulted **Litiana Regu**, a 7 year old, by kissing the buttocks of the said **Litiana Regu**.

2. Assessors unanimously found the Accused guilty on both Counts.
3. I direct myself in accordance with my own Summing up and review the evidence called in the trial. I pronounce my judgment as follows.
4. The Prosecution based its case substantially on evidence of the Victim, Litiana Regu.
5. Litiana Regu said in her evidence that the Accused called her to a room, closed the door and ask her to go on top of the bed, then took off her tights and pantie, kissed her on her cheeks, kissed her on her buttocks turned her over and kissed her on her 'bele' and licked her 'bele' with his tongue. She demonstrated to Court her private part as referred to as 'bele'. He also pulled out his private part and wanted her to kiss it.
6. I find that the evidence of Litiana is reliable and trustworthy. Rest of the evidence led in the trial was also consistent and supported the victim's evidence. Assessors could have safely acted upon her evidence in forming an opinion of guilt.
7. Litiana was only 10 years of age when she gave evidence. I watched her giving evidence and observed her demeanour. She did not encounter much challenge when she was being cross examined. She was straightforward and not evasive. What the witness was talking about in her evidence was probable in the circumstances of the case. She did not have any apparent reason to make up a case against her uncle and falsely implicate him.
8. Litiana had not complained to her cousin promptly after the incident. I find that Litiana had reasonable justification not to relate the incident in detail to her cousin soon after the incident. When inquired as to what had happened upstairs, Litiana had informed her cousin that Ulabale had told her not to say anything; if she does he would punch her. Ulabale had also followed them downstairs. Litiana looked scared at that time. Litiana had told her cousin about the warning given by uncle Ulabale.
9. Litiana had told the fuller story when her mother returned home from training around six o'clock in the evening. Recent complaint of Litiana made to her mother is consistent with her evidence.

10. Litiana's mother Marovia had not complained to the Police promptly when she came to know of the incident, even though the Police Station was just meters away from her place. Marovia's explanation was that she wanted Ulabale to come and first talk to her, but he had already left for Rakiraki after the incident. He had not returned.
11. Ulabale was not a stranger. He is a cousin of Marovia's husband. It is reasonable for her first talk to him and wait for two days before going to Police to complain about the incident. Marovia's explanation for delay is acceptable.
12. That was the first time Ulabale had come and stayed at Marovia's place for such a long time. Marovia admitted that she did not like Ulabale's long stay at her place. During his stay, Ulabale was fully dependent on them for food and everything. Marovia was also worried about Litiana's security when Ulabale was there. In view of this evidence, Defence took up the position that Litiana's mother had made up this story to get rid of unwelcome visitor at her house.
13. I do not see why Marovia should make up a story aimed at forcing Ulabale to leave her place when Ulabale had already left for Rakiraki after the incident.
14. Ulabale's post-incident behaviour (leaving the house without informing) is also compatible with his guilt.
15. Litiana's evidence is reliable, and acceptable. Her evidence is sufficient to establish elements of the charges. Accused's acts, licking of Litiana's vagina and kissing her buttocks do constitute elements of Sexual Assault.
16. I am convinced that the Assessors were justified in coming to an opinion of guilt to each of the Counts. Their opinion was not perverse. It is open for them to reach such a conclusion on the evidence led in the trial.
17. Prosecution has proved both the charges beyond reasonable doubt. I accept the opinions of the Assessors. Accused is convicted on each Count accordingly.
18. That is the judgment of this Court.




Aruna Aluthge
JUDGE

AT LAUTOKA
On 26th August 2015

Solicitors: **Office of the Director of Public Prosecution for State**
 Office of the Legal Aid Commission for Accused