

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No: HAC 02 of 2015

STATE

V

TOMANI CERELALA

Counsel: Ms. A. Vavadakua for State
Mr. K. Ratule for Accused

Date of Summing Up : 6 May 2016
Date of Judgment : 6 May 2016

JUDGMENT

[1] The accused was charged with the following offences:

COUNT 1

Statement of Offence:

RAPE: Contrary to section 207 (1) and (2) (b) and (3)
of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMANI CERELALA between the 1st day of January, 2014 and the 28th day of December, 2014 at Savusavu in the Northern Division, with his tongue penetrated the vagina of a girl (name suppressed) aged 10 years old.

COUNT 2

Statement of Offence:

RAPE: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMANI CERELALA between the 1st day of January, 2014 and the 28th day of December, 2014 at Savusavu in the Northern Division, with his penis penetrated the vagina of a girl (name suppressed) aged 10 years old.

COUNT 3

Statement of Offence:

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

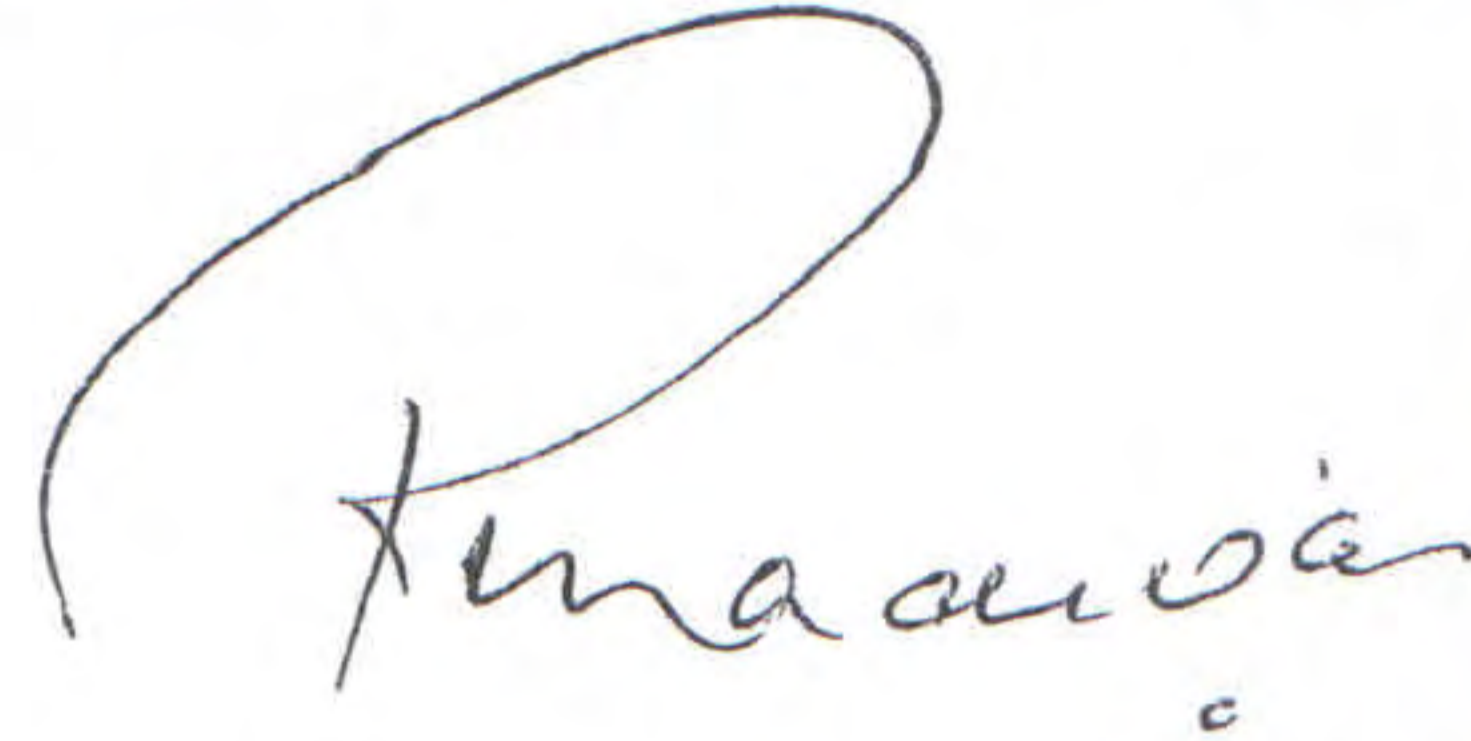
Particulars of Offence

TOMANI CERELALA on the 29th day of December, 2014 at Savusavu in the Northern Division, with his

finger penetrated the vagina of a girl (name suppressed) aged 10 years old.

- [2] At the end of the prosecution case, the Court on its own motion found that there was no case to answer for the first count, there being no evidence of penetration.
- [3] After trial in this court three assessors returned with unanimous opinions of guilty on the remaining counts 2 and 3.
- [4] In concurring with the assessors the Court found the accused guilty on those two counts and convicted him accordingly.
- [5] The evidence came from the young girl whom I shall call Mere (not her real name). She was 10 years old at the relevant time and 12 years old now. Mere was an extremely reluctant witness and the State Counsel had a great deal of difficulty in eliciting her evidence. When asked questions relating to her family and friends she was far more forthcoming but it was obvious that she was embarrassed to tell of sexual matters which is understandable. With a lot of encouragement from an extremely sympathetic female interpreter, she eventually told of the two incidents which were the foundation of the two charges that the accused has been convicted of.
- [6] The obvious distress she underwent in giving this evidence added to its veracity, and I had no doubt that she was telling the truth.
- [7] Although there is no need for corroboration in sexual cases, the evidence of her Aunt and a Doctor who examined her did to some degree confirm her evidence.

- [8] I found that the State had proved the case on these two counts beyond reasonable doubt.
- [9] The fact that the accused did not give evidence nor called witnesses had no influence whatsoever on my finding.



P.K. Madigan
Judge



At Labasa
6 May 2016