

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 378 OF 2013

STATE

VS

WAISAKE VUETI

Counsel : **Ms. S. Serukai for the State**
: **Trial in Absentia. No Appearance**

Summing Up : **22nd September 2016**


Judgment : **23rd September 2016**

JUDGMENT

- [1] The accused, **WAISAKE VUETI** is charged, contrary to Sections 207(1), (2)(c) and (3) of the Crimes Decree No. 44 of 2009 for committing for Rape on VASEMACA VAKACIVO, who was 9 years old at the time of offending.
- [2] The trial proceeded *in absentia* and also on the presumption that he pleaded not guilty to the charges. The ensuing trial lasted for 3 days. The complainant and three Police officers who were involved with the investigation and recording of the caution interview statement of the accused have given evidence for the prosecution.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the two counts of Rape.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the 12 year old complainant. According to her, the accused lived with them for three weeks prior to the incident. In the morning of 28th August 2013, she was at home with her brother Epeli and the accused. They were watching a movie. Then the accused, having shut Epeli in a room, had penetrated the complainant's vagina with his penis, after calling her into another room.
- [6] On the following morning, the accused took the complainant away from the house to break breadfruit. Then he called her into a vacant house and in its bathroom, penetrated the complainant's vagina with his penis. He threatened her with death if she revealed about it to her aunt.
- [7] In his caution statement, marked by the prosecution during the trial, the accused made certain admissions on relevant matters to this case.
- [8] The assessors were directed in the summing up to evaluate the probabilities of the version of events as presented by the prosecution. The inconsistencies of the evidence of the complainant were also highlighted with suitable cautions. They have found the evidence of prosecution as truthful and reliable, as they unanimously found the accused guilty to the two counts of Rape.
- [9] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I accept her evidence as truthful account and concur with the opinion of the assessors.
- [10] I considered the voluntariness of the caution interview statement, tendered as **P.E. No. 4**. The prosecution relied upon the evidence of Cpl 2978 Jemesa and Cpl 2869 Emosi to prove its voluntariness beyond a reasonable doubt. I accept their evidence that the statement was recorded voluntarily and also it contained a truthful statement.
- [11] I am also satisfied that evidence of the prosecution presented through the complainant and the admissions made in the caution interview statement are sufficient to establish the elements of Rape on both occasions, namely penetration of vagina by penis and identity of the accused, beyond a reasonable doubt.
- [12] In the circumstances, I convict the accused, **WAISAKE VUETI** to both counts of Rape.

[13] This is the Judgment of the Court.



ACHALA WENGAPPULI
JUDGE



At Suva

This 23rd Day of September 2016

Solicitor for the State : ***Office of the Director of Public Prosecution, Suva***
Solicitor for the Accused : ***Trial in Absentia. No Appearance***