

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 182 OF 2016**

STATE

v

SILAS SANJEEV MANI

Counsel: : Ms R. Uce with Ms S. Navia for the State  
: Ms J. Singh for the Accused

Date of Summing Up : 15 October 2018

Date of Judgment : 17 October 2018

(Name of the victim is suppressed. She is referred to as KR)

**JUDGMENT**

1. The Accused was charged with one count of rape and tried before three assessors. The information reads as follows:

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) & (2) (a) & (3) of the Crimes Decree No. 44 of 2009.

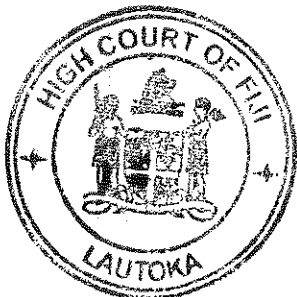
### *Particulars of Offence*

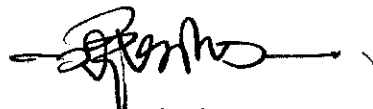
**SILAS SANJEEV MANI** between the 30<sup>th</sup> day of April, 2016 and the 11<sup>th</sup> day of July, 2016 at Sigatoka in the Western Division, inserted his penis into the vagina of **KR**, a 9 year old girl.

2. The Assessors unanimously found the Accused guilty of Rape as charged.
3. I direct myself in accordance with my own Summing Up and review evidence led in the trial. Having concurred with the opinion of Assessors, I pronounce my judgment as follows.
4. To find the accused guilty in this case, the Prosecution must prove beyond reasonable doubt that the accused penetrated victim's vagina with his penis
5. Prosecution called two witnesses, the victim KR and her father Avinesh. Prosecution's case is substantially based on the evidence of the victim. The victim gave evidence under oath. She is 11 years old at the time of giving evidence. The court was satisfied that she understood the nature of oath and her obligation to tell the truth.
6. Victim's mother had gone to prison murdering her daughter. After her mother had gone to prison, the victim was taken by her aunty Suman. Suman could not keep the victim for a longer period of time because of the dispute she had with her husband. Suman had asked the accused to take the victim with him to Roselyn's house. The alleged incidents had happened when the victim was taken by the accused to Roselyn's place.
7. The victim said that she informed aunty Roselyn the next morning of what had happened. However, Roselyn denied having received such a complaint but admitted seeing blood in victim's vagina. Roselyn also admitted giving a pad to the victim when she received the complaint of bleeding.
8. Roselyn was called by the Defence. She appeared to give evidence to save the accused. However she admitted receiving a complaint and therefore, there is no dispute that the victim was bleeding from her vagina when Roselyn received a complaint. Roselyn advanced several propositions to show that the blood noted in victim's vagina had nothing to do with this rape allegation.

9. Roselyn said that she thought the victim was having menses. She also said that the victim had informed her that something had hit her while playing at school. She also tried to attribute injuries to scratching by a comb and self-fingering.
10. The victim denied all those propositions. She however admitted having told Roselyn and the Head Teacher that a boy from her school used his finger where she used to urinate from. The victim explained why she had to tell such a story. She said that she had to tell this story because the accused taught her to do so. The victim's evidence that no boy from her school was brought before the Head Teacher regarding such an allegation further confirmed that this story was planted by the accused.
11. Assessors unanimously rejected all propositions advanced by the defence to find the accused guilty of rape. The opinion of Assessors is justified and was available in evidence led in trial. The fact that blood was noted in victim's vagina at the time of complaint is consistent with the rape allegation.
12. There is a delay in reporting the matter to police. However there are reasonable explanations for the delay. The victim was in a vulnerable situation at Roselyn's house. Roselyn had slapped the victim when the incidents were reported to her. Accused also had slapped the victim and told her to keep quiet.
13. Victim's father Avinesh said that he received information that something bad was happening to the victim at Roselyn's place. He had taken custody of the victim and asked his wife Noelene to make inquiries. The victim had relayed the incidents to Noelene and later given a statement to police. That is how the sexual abuse came to light. There are no material contradictions between victim's previous statement and her evidence in court. I am satisfied that the complaint victim eventually made to police is genuine.
14. I observed the demeanor of the victim. She was confident and straightforward. Her demeanour is consistent with her honesty. The victim is the half-sister of the accused. She had no credible reason to make up this serious allegation against her brother.
15. Defence called the accused and his two aunties, Roselyn and Suman. The accused denies the allegation. However he was unable to say why this serious allegation was made up against him by her sister. The version of the Defence appears to be that the victim made up this allegation because she was not happy with certain actions taken by the accused to discipline her and correct her so called misbehaviors.

16. Accused said that the victim was misbehaving and stubborn. Two aunts, Roselyn and Suman were called to support the version of the Defence that the victim was a 'naughty girl'; that she did not wear undergarments, that she used to scratch herself. However the proposition that victim's misbehavior at Suman's place led to her being relocated at Roselyn's place was never put to the victim whilst she was giving evidence. Nor had the accused told such a reason to police at his interview.
17. The witnesses called by the Defence are unreliable. They contradicted in their evidence. I observed their conduct and demeanor when they were giving evidence. Their determination to protect the accused was manifest in their evidence and conduct.
18. I accept the version of the Prosecution and reject that of the Defence.
19. The victim said that Silas inserted his 'urinating thing into her urinating thing' When she was asked, what do you use your urinating thing for? She said 'to urinate' or pass urine. She said that she does not know the English term for it. She also pointed to where her urinating is located. She said that the accused repeatedly did the same thing when she came to reside at Roselyn's place.
20. I am satisfied that the victim was referring to genital organs (penis and vagina) when she used the words "urinating thing". Children may not fully understand what it is that they are describing, and they may not have the words to describe the sexual organs in adult language.
21. Prosecution proved the charge beyond reasonable doubt.
22. I accept the unanimous opinion of assessors and find the accused guilty of Rape as charged.
23. Accused is convicted accordingly.
24. That is the Judgment of this Court.



  
Aruna Aluthge  
Judge

**AT LAUTOKA**  
**17 October 2018**

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