

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 149 OF 2016

STATE

-v-

KALAVETI RATU NAWAQAMATE

Counsel : Ms. R. Uce with Ms. S. Navia for the State
Ms. K. Vulimainadave for the Accused

Date of Summing Up : 25 October 2018

Date of Judgment : 29 October 2018

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

JUDGMENT

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

Count 1

Representative

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALAVETI RATU NAWAQAMATE between the 17th – 19th of July 2016, at Sigatoka in the Western Division penetrated the vagina of **IN** with his fingers.

Count 2

Representative Count

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALAVETI RATU between the 17th – 19th of July 2016, at Sigatoka in the Western Division unlawfully and indecently assaulted **IN** by kissing her cheek.

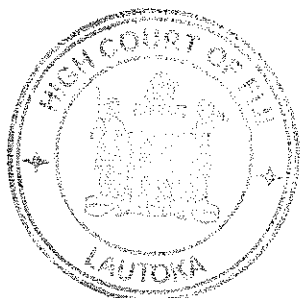
2. Assessors unanimously found the accused guilty of Rape as charged.
3. I direct myself in accordance with my own Summing Up and review evidence led in trial. Having concurred with the opinion of assessors, I pronounce my judgment as follows.
4. Accused is charged with one count of Rape and one count of Indecent Assault. To find the accused guilty of Rape in this case, the Prosecution must prove beyond a reasonable doubt that the accused penetrated victim's vagina to any extent with his finger. To find the accused guilty of Indecent Assault in this case, the Prosecution must prove beyond a reasonable doubt that the accused kissed victim's cheeks in the circumstance of indecency.


5. Prosecution called six witnesses including the victim and her mother Iliana Mole. Prosecution's case is substantially based on the evidence of the child victim who gave unsworn evidence. To support the evidence of the victim, Prosecution called police officers and relies on the confession alleged to have been given by the accused to police in his caution interview and the charge statement. Police officers presented evidence to prove that confessions were true and voluntary statements of the accused. Prosecution also relies on recent complaint evidence and called victim's mother Iliana to prove the consistency of the conduct of the victim.
6. Defence's case is one of complete denial. They say that this allegation has been fabricated by victim's mother after a dispute over a coconut tree. At the end of the Prosecution's case the Defence called doctor Nasokia who had examined the victim after the alleged incident and sought to discredit the version of the Prosecution that the victim was digitally taped.
7. The victim said that the accused took her to his bed, covered her with a mat, took off her underwear and then poked her vagina. She said that the accused poked her vagina three times on the same day. She said that she cried because it was painful. She also said that the accused kissed her cheeks.
8. Victim's evidence is credible and believable. Her evidence is further supported by the confession of the accused and recent complaint evidence of her mother. Doctor's medical evidence did not discredit the version of the Prosecution.
9. The victim was a 4-year old child at the time of the offence and was 6 years old when she gave evidence. She gave unsworn evidence. There is no rule in Fiji anymore that unsworn evidence of a child of tender years must be corroborated by an independent source. However, to be on the safe side, I looked at other evidence led in trial to satisfy myself that the child victim gave truthful evidence.

10. The victim is consistent in her conduct. She had promptly informed her mother about the incident when she was found crying due to pain in her vagina. Her mother had noted scratch marks on her vagina soon after the incident. The victim was in pain and in a distressed condition. She had complained to police on the same day. The doctor who examined the victim found that there was tenderness in vagina, when palpated. I observed the demeanor of the victim. I am satisfied she told the truth in court.
11. Evidence of victim's mother is consistent and believable. She frankly admitted that the accused refused to give coconuts to her family. However, she denied that there was a dispute between her and the accused and that the allegation has been fabricated. Defence Counsel's proposition that the victim used to be looked after by the accused when she and her husband went to farm further indicates that there had been no such animosity between the accused and victim's family.
12. In the caution interview and the charge statement, the accused had allegedly confessed to both offences. Accused had admitted that he inserted his finger into victim's vagina more than once and that he kissed the victim's cheeks more than once.
13. The Defence says that the confession was obtained by trickery and using unfair practices. Police officers presented credible and consistent evidence to deny those allegations. Accused had preferred to be interviewed in iTauki- Bauan dialect. The record of interview had been read back to the accused in the dialect which he could understand. For further clarifications, Navosa dialect had also been used. The evidence that there is no big difference between Bauan dialect and Navosa dialect is not challenged. Therefore, no prejudice was caused to the accused in his interview or charge. The accused is interviewing officer's uncle. She said that the accused was treated well like a VIP. There is no acceptable evidence of trikeryof unfair police practices. The caution interview is consistent with other evidence

led in trial. I am satisfied that the accused had told the truth to police in his caution statement and charge statement.

14. The victim was medically examined by doctor Nasokia on the same day at 10.30 p.m. Doctor found that there was tenderness on victim's vagina when palpated. The medical evidence is not inconsistent with victim's evidence about the allegation of digital rape. The fact that victim's hymen was still intact did not rule out the possibility of a digital rape because in doctor's opinion it is likely that even if a finger is penetrated into the vagina, hymen would still be intact, depending on the extent of insertion. A slightest penetration is sufficient to satisfy the element of digital rape. Prosecution proved the 1st count beyond reasonable doubt.
15. The victim said that the accused kissed victim's cheek. Accused had also admitted in his caution interview that he had kissed victim's cheeks. It cannot be said that kissing cheeks of a niece by her uncle is indecent. However the kissing is associated with circumstances of indecency. The second count is also made out.
16. I agree with the unanimous opinion of assessors and find the accused guilty of Rape and Indecent Assault as charged.
17. Accused is convicted accordingly on each count.
18. That is the judgment of this Court.




Aruna Muthge
Judge

AT LAUTOKA

29th October, 2018

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