

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 51 OF 2016**

STATE

-v-

**IFEREIMI KUBUKAWA**

Counsel : Ms. S. Kiran with Ms. S. Naibe for State  
Ms. K. Vulimainadave for Accused

Date of Summing Up : 23 November 2018

Date of Judgment : 27 November 2018

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

**JUDGMENT**

1. The accused is charged on the following Information and was tried before three assessors.

*Statement of Offence*

**Representative Count**

### *Statement of Offence*

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

### *Particulars of Offence*

**IFEREIMI KUBUKAWA** between the 1<sup>st</sup> day of October, 2015 and the 31<sup>st</sup> day of December, 2015 at Nadi in the Western Division penetrated the vagina of **MM**, with his finger.

2. Having called four witnesses, Prosecution closed its case. At the end of Prosecution's case, court found that there is a case to answer and put the accused to his defence. Accused exercised his right to remain silent and did not call witnesses for Defence.
3. After a deliberation of nearly an hour, assessors unanimously found the accused 'guilty' of rape as charged.
4. Having reviewed my own Summing Up and evidence led in trial, I have decided to accept the unanimous opinion of assessors. I proceed to give my reasons as follows.
5. To find the accused guilty of Rape in this case, Prosecution must prove beyond a reasonable doubt that the accused penetrated MM's (a victim's) vagina with his finger.
6. This rape case is unique in that the alleged victim was not called to give direct evidence as to what she saw heard or felt. The reason being the alleged victim was under 6 months old at the time of the offence and she was not in a position

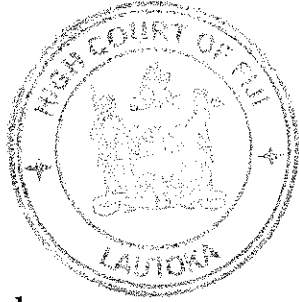
to testify as to the alleged rape incident. Prosecution therefore based their case substantially on circumstantial evidence, medical evidence and the alleged confession of the accused.

7. Having considered the pieces of circumstantial evidence adduced at trial, I am satisfied that Prosecution proved, beyond reasonable doubt, that the accused had penetrated victim's vagina with his finger more than one occasion.
8. The accused is the biological father of the victim. Whilst living in Vagadra village with the accused, victim's mother- Litiana had noticed a discharge of pus from victim's vagina. The victim was 3 months old at that time. When the victim was 5 months old she had noted pus with blood several times. During that period of time, Litiana had gone to the river to wash cloths leaving the victim with the accused. Having seen blood and pus, Litiana suspected that the accused had done something to the victim. She had questioned the accused because it was only the accused that had been living in the house at that time. The accused had denied doing anything wrong to the victim. Although she had entertained a degree of suspicion, Litiana had refrained from going to a doctor or complaining of the symptoms at the clinic. She had only applied Fijian herbal medicine to treat the victim.
9. After a heated argument, the accused had chased Litiana away from home forcing her to seek refuge with the victim at Radini's place. Whilst staying at Radini's place, Litiana had gone to the river to wash cloths, leaving the victim with Radini's mother. In the meantime, the accused had come and taken the victim away from home.
10. When the accused had returned the baby home, Litiana observed that the victim had had a bath and she was feeling weak and sleepy. When Litiana took the victim to change her napkin, she saw blood in victim's napkin. Litiana in her evidence said that when she came back from the river, she wanted to change victim's napkin because she didn't want Radini to find out 'what was happening to her daughter'. Radini however had already noted pus and blood while she was changing victim's napkin and had questioned why there was pus and blood

coming out from victim's vagina. Litiana replied that she had already seen blood and pus since October, 2015. Radini advised Litiana to take the victim to hospital.

11. After the medical examination at the clinic, Litiana was advised to go to the police station. Whilst at the Nadi police station, a Social Welfare Officer came and took the baby to Lautoka Hospital. Only then Litiana had lodged a complaint with the Nadi Police Station on 12<sup>th</sup> February, 2016.
12. Litiana had only told police that she had left the victim with her father and when she came back, the victim was with another mother and the father could not be located. She also informed police regarding the pus and the blood that was coming out from victim's vagina.
13. The victim was medically examined by Dr. Bulatale at the Nadi Hospital. Based on her findings that victim's hymen to be not intact and of pus and blood in victim's vagina, the doctor suspected the victim to have been sexually abused. The victim was then referred to Lautoka Hospital for further investigations.
14. While excluding the possibility of a sexually transmitted infection or mere bacterial infection, doctor found the broken hymen and the discharge of pus and blood to be consistent with a penetration of victim's vagina with an object such as finger or penis.
15. The accused was arrested and interviewed under caution. The accused admitted inserting his finger into victim's vagina on several occasions and thereby confessed to the crime.
16. Prosecution called a police officer to prove that the confession was made by the accused and it was made voluntarily.

17. There is no credible evidence of police brutality or unfair practices being used to obtain a confession. The fact that the accused had made mixed statements comprising both admissions and denials indicates that he had made the confession freely and voluntarily. His answers in the interview are consistent with other evidence led in trial. I am satisfied that the accused had given the confession and that he had told the truth in his confession.
18. Dr. Bulatale's medical evidence did not implicate the accused. However it is consistent with the allegation of a digital rape.
19. Evidence of Prosecution is consistent and believable.
20. It appears from Litiana's evidence and other circumstances, that she (Litiana) had been suppressing the fact that the victim was continuously being (digitally) raped by her father. Litiana was not surprised when it was brought to her notice (by Radini) that the victim was bleeding. She did not go to a doctor or made a complaint to anyone until Radini had intervened. Litiana said that she did not want Radini to find out 'what was happening to her daughter'. It appears to be the reason why Litiana did not want Radini to know that the victim was bleeding and discharging pus from her vagina. Litiana said that she did not want Radini to know about it because she did not want to earn a bad reputation in the village of Vagadra. Litiana also said that she was only questioning the accused and if he admitted they could have sorted it out 'within the family'. If not for Radini's intervention, this crime would not have come to light. The circumstantial evidence is consistent with nothing but the guilt of the accused.
21. Prosecution proved the charge beyond reasonable doubt. I accept the unanimous opinion of assessors and find the accused guilty of rape as charged.
22. Accused is convicted accordingly.



Aruna Aluthge

Judge

At Lautoka

27<sup>th</sup> November, 2018

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Accused