

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 139 of 2017**

STATE

v.

WAISEA DOBUI

**Counsel:** Ms. L. Bogitini for State  
Ms. K. Boseiwaqa, Ms. M. Ratidara for Respondent

**Date of Hearing:** 20<sup>th</sup> to 22nd March 2018

**Date of Summing Up:** 26<sup>th</sup> March 2018

**Date of Judgment:** 26<sup>th</sup> March 2018

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**JUDGMENT**

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1. The accused is charged with four counts of Rape, contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are that:

WAISEA DOBUI is charged with the following offences:

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA DOBUI** on the 17<sup>th</sup> day of March, 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of **AB** a child under the age of 13 years with his tongue.

**COUNT TWO**

*Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**WAISEA DOBUI** on the 17<sup>th</sup> day of March 2017, at Qarani village, Gau in the Eastern Division, unlawfully and indecently assaulted **AB** by rubbing his penis on her anus.

**COUNT THREE**

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA DOBUI** on the 24<sup>th</sup> day of March, 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of **AB** a child under the age of 13 years with his tongue.

**COUNT FOUR**

*Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**WAISEA DOBUI** on the 24<sup>th</sup> day of March 2017, at Qarani village, Gau in the Eastern Division, unlawfully and indecently assaulted **AB** by rubbing his penis on her anus.

**COUNT FIVE**

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA DOBUI** on the 13<sup>th</sup> day of April 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of **AB** a child under the age of 13 years with his tongue.

**COUNT SIX**

*Statement of Offence*

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

*Particulars of Offence*

**WAISEA DOBUI** on the 13<sup>th</sup> day of April 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of **AB** a child under the age of 13 years with his finger.

2. The accused pleaded not guilty for these offences; hence, the matter was proceeded to hearing. The hearing commenced on the 20th of March 2018 and concluded on the 22nd of March 2018. The Prosecution adduced the evidence of four witnesses, including the Complainant. At the conclusion of the case of the prosecution, the court found, pursuant to Section 231 (1) of the Criminal Procedure Act, that there is no evidence presented by the prosecution to establish the main elements of the offence of

Sexual Assault as charged under the second count. Accordingly, the accused was acquitted from the said offence.

3. The defence then adduced the evidence of four witnesses, including the accused. Subsequently, the learned Counsel for the prosecution and the defence made their respective closing addresses. I then delivered by summing up.
4. The three assessors in their opinions unanimously found the accused guilty for each of the four counts of Rape and one count of Sexual Assault.
5. Having carefully considered the evidence presented during the hearing, the respective closing submissions of the parties, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
6. The accused raised the defence of alibi, where he claims that he was not at home at any of the times materially relevant to these offences. The accused called three witnesses for his defence of alibi.
7. According to the evidence given by the accused, he went to the cementing of the cemetery in the morning of the 17th of March 2017. He remained there at the cemetery till 1pm. The accused then went to Naicurucuru with a group of villagers to drink grog. One Josefa Miki and Ilimotama were among the group. They drank grog at Naicucucuru for about half an hour. They then moved to Baba's house to continue their drinking. According to the evidence given by the accused, Ilimotama was also present at Baba's house. Once the fundraising event started at the village hall in the evening, they all went there.
8. Josefa Miki in his evidence said that he met the accused at the cemetery, where the villagers cemented the cemetery. The work begun at around 8am and concluded within half an hour. He then went to Naicurucuru to drink grog with the accused and group of other villagers. According to Josefa's evidence, they have started to drink grog at Naicurucuru around 9am and it has lasted for about 20 hours. However, the accused said they started to drink grog at Naicurucuru at around 1pm. As per the evidence

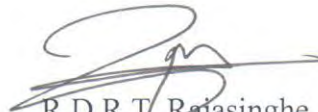
given by the accused, the group drank grog at Naicurucuru for about 30 minutes and moved to Baba's place to continue it. In contrast, Josefa said that they drank grog at Naicurucuru till 7pm before they moved to Baba's place.

9. Even though the accused in his evidence claimed that Ilimotama was among the drinking party at Naicurucuru and then at Baba's place, Ilimotama in his evidence said otherwise. According to the evidence given by Ilimotama, he was on duty on that day at the Police Post and came home for lunch between 1pm to 2pm. He then saw a group of people, including the accused were drinking grog at Naicurucuru. He has last seen the accused at around 2pm on 17th of March 2017.
10. In view of these contradictory natures of the evidence given by the accused and two of his witnesses in respect of the events that took place on the 17th of March 2017, I do not find their evidence is credible and truthful or may be true.
11. The accused in his evidence said that he was at his farm and came home when the sun started to set. He was not aware about the time, but he left the farm when the sun started to set behind the mountains. The Complainant in her evidence said that the accused came home after she returned home from school on the 13th of April 2017. The accused was already at home when she returned home from school on the 24th of March 2018. Waisele in his evidence said that he usually meets the accused on his way to the farm. The meeting of the accused on his way to the farm is a usual occurrences in his life, if then how he could specifically remember the event that took place on the 13th of April 2017. According to his evidence it was a normal and usual day with their usual routines. In view of these findings, I do not accept the evidence of alibi presented by the defence as true and credible evidence. Moreover, I do not find that the defence of alibi may be true.
12. I now turn onto determine whether the prosecution has proven beyond reasonable doubt that the accused has committed these offences as charged.
13. The Complainant in her evidence specifically explained that the accused penetrated into her vagina with his tongue on the 17th of March 2017, 24th of March 2017 and the 13th

of April 2017. Moreover, the accused had penetrated into her vagina with his finger on the 13th of April 2017. He had rubbed his penis on her anus on the 24th of March 2017.

14. The Complainant said that she felt pain when he inserted his tongue and finger into her vagina. Doctor Goundar in her evidence said that according to her clinical findings, she has high reasons to suspect that the penetration of a finger is the cause for the damage found in the hymen of the Complainant than other possibilities. The evidence of Doctor Goundar further strengthens the evidence given by the Complainant in her evidence.
15. I have noticed the demeanour and the manner the witnesses gave evidence. The Complainant in her evidence was straight and forthright. She maintained her position when she was cross examined by the defence.
16. In view of these reasons, I accept the evidence given by the Complainant as true and credible evidence. Accordingly, I find that the prosecution has proven beyond reasonable doubt that the accused guilty for each of these offences as charged.
17. Accordingly, I do not find any cogent reasons to disregard the unanimous opinion of guilt given by the three assessors.
18. In conclusion, I hold that the accused is guilty for each of the four counts of Rape contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, and convict him accordingly for the same.



  
R.D.R.T. Rajasinghe  
Judge

At Suva  
26<sup>th</sup> March 2018

Solicitors

Office of the Director of Public Prosecutions for the State.  
Office of the Legal Aid Commission for the Respondent.