

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 74 OF 2014

STATE

-v-

TAWAKE WAQABACA WAQALEVU

Counsel : Mr. J. Niudamu for State

Accused tried in absentia

Date of Summing Up : 13th April, 2018

Date of Judgment : 16th April, 2018

(Name of the Complainant is suppressed. She is referred to as AD)

JUDGMENT

1. The Accused is charged on the following Information and was tried before three Assessors.

Statement of Offence

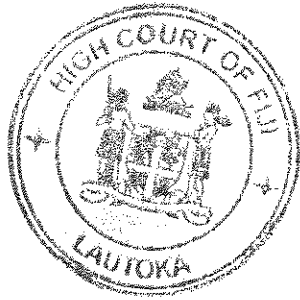
RAPE: Contrary to Section 207 (1) and (2) (b) and Section 207 (3) of the Crimes Act of 2009.

Particulars of Offence

Tawake Waqabaca Waqalevu on the 2nd day of June, 2014 at Naivuvuni, Rakiraki in the Western Division, penetrated the vagina of AD with his finger, and at the relevant time the said AD was under the age of 13 years.

2. The Accused did not attend court to defend the charge. The trial was conducted *in absentia*.
3. At the end of the trial, the Assessors unanimously found the Accused 'guilty' of rape as charged.
4. Having reviewed my own summing up and evidence led in the trial, I have decided to accept the unanimous opinion of Assessors. I proceed to give my reasons as follows.
5. Prosecution called five witnesses and based their case substantially on the evidence of AD, the Complainant. Prosecution also relies on recent complaint evidence of complainant's mother, Noma Sera Rokodike, and medical evidence to prove the consistency of the Complainant.
6. The Complainant was 6 years old at the time of the offence and did not have the necessary mental capacity to consent to the alleged sexual act. It is the burden of the Prosecution to prove beyond a reasonable doubt that the Accused Tawake Waqabaca Waqalevu had penetrated the vagina of AD with his finger.
7. The Accused is Complainant's uncle. Complainant's mother Noma Sera Rokodike said that the Accused Waqa is her cousin from her father's side. Waqa had visited Complainant's house on 2nd of June, 2014, after his last visit in 2011. The Complainant referred to the person who penetrated her as uncle Waqa who had visited her house on 2nd of June, 2014. The police investigating officer Bawaqa said that the name of the Accused is Tawake Waqabaca Waqalevu who is also known by his short name as Waqa. The Prosecution proved the identity of the Accused beyond reasonable doubt.

8. The Complainant made a prompt complaint to her mother Noma Sera Rokodike soon after the incident. The Complainant said that, on her way back from the river, the Accused made her lay down on the grass, covered her mouth and put his one finger in her vagina. She said that it was painful. She was scared. She was just crying. When her siblings, Inise and Joeli, asked her what happened, she didn't tell them anything. Then she ran to her mother and told that uncle Waqa did to her what adults do.
9. Complainant's mother Noma Sera Rokodike gave evidence and confirmed that her daughter AD came running after her bath and she was standing at the doorstep and crying. She asked her, *what's wrong?* Complainant said, *'Waqa did something to me that only adult people do'*. Then she asked AD, *what did Waqa do?* AD said *'he kissed me, put his tongue in my mouth and put his finger inside my vagina'*.
10. The Complainant maintained her consistency and promptly complained to her mother soon after the alleged incident. The Complainant was 6 years old student at the time of the offence. She was not mature enough or had an apparent motive to make up such a serious allegation against the Accused who is her uncle.
11. Doctor Alumita Serutabua had examined the Complainant soon after the alleged incident and found a bruising over *labia minora*, the smaller inner folds of the vulva. Doctor opined that this bruising may be due to the offender touching or fingering her vagina during the act. Doctor's medical finding is consistent with the evidence of the Complainant.
12. The Complainant is a child witness. She understood the nature of the oath administered to her. She understood the obligation to tell the truth in Court. I observed Complainant's demeanor in court. She is confident and not evasive. I find her to be an honest and credible witness.
13. There is clear evidence that the Accused had penetrated the vagina of the Complainant with his finger. Prosecution proved the charge beyond reasonable doubt. I agree with the unanimous opinion of Assessors.
14. I find the Accused guilty of rape. Accused is convicted accordingly.
15. That is the Judgment of this Court.



Aruna Aluthge

Judge

AT LAUTOKA

16th April 2018

Solicitor: Office of the Director of Public Prosecution for State