

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 38 of 2017

STATE

V

- 1. EPARAMA WARUA**
- 2. STAN DAVIDSON RAMERE**

Counsel : Ms. Dharshani Kumar for the State
Ms. Karen Boseiwaqa for the 1st Accused
Mr. Romanu Vananalagi for the 2nd Accused

Dates of Trial : 9 & 11 October 2018

Summing Up : 12 October 2018

Judgment : 12 October 2018

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "MW".

JUDGMENT

[1] As per the Amended Information, filed in Court on 8 October 2018, the two accused are charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

STAN DAVIDSON RAMERE, on 4 June 2011, at Labasa in the Northern Division, penetrated the vagina of MW, with his penis, without her consent.

COUNT 2

Statement of Offence

AIDING AND ABETTING: Contrary to Section 45 and 207 [1] and [2] [a] of the Crimes Act of 2009.

Particulars of Offence

EPARAMA WARUA, on 4 June 2011, at Labasa in the Northern Division, aided and abetted **STAN DAVIDSON RAMERE** to penetrate the vagina of MW, with his penis, without her consent.

- [2] As could be seen, the 2nd accused has been charged with Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009 (Crimes Act), in Count 1; while the 1st accused has been charged with Aiding and Abetting the 2nd accused to commit the offence of Rape, contrary to Section 45, 207 (1) and (2) (a) of the Crimes Act, in Count 2.
- [3] Both accused pleaded not guilty to their respective charges and the ensuing trial was held over 2 days.
- [4] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the 2nd accused not guilty of Rape, and the 1st accused not guilty of Aiding and Abetting the 2nd accused to commit the offence of Rape. However, by their unanimous decision the three Assessors found the 2nd accused guilty of the lesser or the alternative charge of Defilement of a Young Person between 13 and 16 Years of Age, and the 1st accused guilty of the lesser or the alternative charge of Aiding and Abetting the 2nd accused to commit the offence of Defilement of a Young Person between 13 and 16 Years of Age.
- [5] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the unanimous opinions of the Assessors.
- [6] During my summing up I explained to the Assessors the provisions of Section 45, 207 (1) and 2 (a) of the Crimes Act.
- [7] The Assessors were directed that in order for the prosecution to prove the first count of Rape, they must establish beyond any reasonable doubt that:
- (i) The 2nd accused;
 - (ii) On the specified day (in this case on 4 June 2011);

- (iii) At Labasa, in the Northern Division;
 - (iv) Penetrated the vagina of MW with his penis;
 - (v) Without the consent of the complainant; and
 - (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.
- [8] Each of the above individual elements were further elaborated upon in my summing up.
- [9] The Assessors were further directed that in order for the prosecution to prove the second count that the 1st accused Aided and Abetted the 2nd accused to commit Rape, they must establish beyond any reasonable doubt that;
- (i) The 1st accused;
 - (ii) On the specified day (in this case on 4 June 2011);
 - (iii) At Labasa, in the Northern Division;
 - (iv) Intended that his conduct would aid and abet the 2nd accused;
 - (iv) For the 2nd accused to penetrate the vagina of MW with his penis;
 - (v) Without the consent of the complainant; and
 - (vi) The 2nd accused knew or believed that the complainant was not consenting, or he was reckless as to whether or not she was consenting.
- [10] The Assessors were also directed that in the event they have a reasonable doubt as to whether the prosecution has proven the two elements based on consent, beyond reasonable doubt, and therefore the offence of Rape, in count one is not established, as an alternative, they may consider whether the 2nd accused is guilty or not guilty of the lesser offence of Defilement of a Young Person between 13 and 16 Years of Age, in respect of the said count, though the 2nd accused is not formally charged in the Amended Information for that offence.
- [11] Thereafter, I went on to explain to the Assessors the salient provisions of Section 215 of the Crimes Act, which deals with Defilement of a Young Person between 13 and 16 Years of Age.
- [12] I explained to the Assessors that in such a situation, the prosecution will have to prove that the 1st accused Aided and Abetted the 2nd accused to commit the offence of Defilement of a Young Person between 13 and 16 Years of Age, in respect of the second count.

- [13] In support of their case, the prosecution called only the complainant, MW.
- [14] For the defence, the 1st accused opted to remain silent; while the 2nd accused opted to offer evidence under oath in support of his case.
- [15] The complainant testified in Court as to the events which transpired on the night of 4 June 2011, while she was at the Salvation Army Family Care Centre [Care Centre]. She was only 13 years and 5 months at the time. Her date of birth is 12 January 1998. She testified as to how the 1st accused had lured her upstairs and taken her to the bed room where the 2nd accused was and thereafter locked the door behind him. Thereafter, the complainant testified as to the manner in which the 2nd accused had forcefully penetrated her vagina with his penis (or penetrated her vagina without her consent).
- [16] The position taken up by the 1st accused is that he had called the complainant upstairs to watch movies as she had requested him to do so. He denies having enticed her to come upstairs. At the time the complainant came upstairs the 2nd accused had also been watching movies with him. Later the 2nd accused had gone to his bedroom. A few minutes later, the complainant had gone by herself to the bedroom.
- [17] The 2nd accused testified in Court and totally denies the allegation of Rape against him. However, he admitted to having sexual intercourse with the complainant with her consent.
- [18] Both the 1st accused and the 2nd accused were 15 years of age at the time, and as such were juveniles.
- [19] It is clear that the three Assessors have found the testimony of the 2nd accused to be truthful and reliable, as they have by a unanimous decision found him not guilty of the charge of Rape. For the same reasons, the Assessors have by a unanimous decision found the 1st accused not guilty of the charge of Aiding and Abetting. Since the 2nd accused admitted to having sexual intercourse with the complainant with her consent, by their unanimous decision the three Assessors have found the 2nd accused guilty of the alternative count of Defilement of a Young Person between 13 and 16 Years of Age.
- [20] Therefore, in my view, the unanimous opinion of the Assessors in finding the 2nd accused not guilty of Rape and the 1st accused not guilty for Aiding and Abetting the 2nd accused is justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in this regard.
- [21] In the circumstances, I find the 2nd accused not guilty of Rape and the 1st accused not guilty for Aiding and Abetting 2nd accused.
- [22] In my view, the unanimous opinion of the Assessors in finding the 2nd accused guilty of the lesser or the alternative charge of Defilement of a Young Person between 13 and

16 Years of Age is justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in this regard.

- [23] In the circumstances, I find the 2nd accused guilty of Defilement of a Young Person between 13 and 16 Years of Age, contrary to section 215(1) of the Crimes Act. Accordingly, I convict the 2nd accused of the said charge.
- [24] However, considering the evidence of the 2nd accused, it is clear there from that there is no credible evidence to implicate the 1st accused with aiding and abetting. His testimony is that on the night of 4 June 2011, the complainant had come upstairs to watch movies. After a while the 2nd accused had got up and gone to his bedroom. The complainant and the 1st accused were still watching movies. The complainant had then come on her own into the room. Thereafter, he had sexual intercourse with the complainant with her consent. The 1st accused had only come into the room later and sat beside the bed.
- [25] In the circumstances, it is my opinion that the unanimous opinion of the three Assessors in finding the 1st accused guilty for aiding and abetting the Defilement of a Young Person between 13 and 16 Years of Age, was not justified.
- [26] Accordingly, I find the 1st accused not guilty of aiding and abetting the Defilement of a Young Person between 13 and 16 Years of Age, and accordingly I acquit him of the said charge.



Riyaz Hamza
Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LABASA

Dated this 12th Day of October 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitors for the 1st Accused : Office of the Legal Aid Commission, Labasa.
Solicitors for the 2nd Accused : Vananalagi & Associates, Suva.