

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 150 of 2018

STATE

vs.

METUISELA MATAYALEWA

Counsel: Ms. U. Tamanikaiyaroi for the State
Ms. M. Ratidara for Accused

Date of Hearing: 02nd, 03rd, 04th December 2019

Date of Closing Submission: 05th December 2019

Date of Summing Up: 10th December 2019

Date of Judgment: 11th December 2019

JUDGMENT

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

COUNT 1

Statement of Offence

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

Particulars of Offence

METUISELA MATAYALEWA between the 1st day of January 2016 and the 31st day of December 2016 at Navolau Village, Naitasiri in the Eastern Division had carnal knowledge of ***SD***, a child under the age of 13 years.

COUNT 2

Statement of Offence

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

Particulars of Offence

METUISELA MATAYALEWA between the 1st day of January 2016 and the 31st day of December 2016, at Navolau Village, Naitasiri in the Eastern Division, on an occasion other than that mentioned in Count 1, had carnal knowledge of ***SD***, a child under the age of 13 years.

COUNT 3

Statement of Offence

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

Particulars of Offence

METUISELA MATAYALEWA between the 1st day of January 2017 and the 31st day of December 2017 at Navolau Village, Naitasiri in the Eastern Division had carnal knowledge of ***SD*** without her consent.

COUNT 4

Statement of Offence

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

Particulars of Offence

METUISELA MATAYALEWA between the 1st day of January 2017 and the 31st day of December 2017 at Navolau Village, Naitasiri in the Eastern Division, on an occasion other than that mentioned on Count 3 had carnal knowledge of **SD** without her consent.

COUNT 5

Statement of Offence

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

Particulars of Offence

METUISELA MATAYALEWA between the 1st day of December 2017 and the 31st day of December 2017 at Navolau Village, Naitasiri in the Eastern Division had carnal knowledge of **SD** without her consent.

2. The hearing commenced on the 2nd of December 2019 and concluded on the 4th of December 2019. The prosecution presented the evidence of the complainant, while the defence adduced the evidence of the accused. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequent to that I delivered the summing up.
3. The two assessors in their opinion found the accused guilty of the first two counts of Rape, but not guilty of the three remaining counts of Rape. However, they found the accused guilty of three alternative counts of Defilement of Young Person between 13 and 16 Years of Age. The third assessor in her opinion found the accused guilty of all five counts of Rape.
4. Having taken into consideration the evidence presented during the hearing, the respective closing addresses of the parties, the summing up and the opinions of the three assessors, I now proceed to pronounce my judgment as follows.

5. The prosecution alleges that the accused had forcefully penetrated into the vagina of the complainant on five separate occasions during the period between 2016 to 2017. The defence denies the allegation, claiming that the first two incidents in 2016 never happened. However, the accused admitted that he had sexual intercourse with the complainant on three occasions in 2017, first at Naitaga, then at Moala and lastly at his home, with the consent of the complainant.
6. It is alleged that the accused had penetrated into the vagina of the complainant with his penis on two occasions in 2016. Both incidents had taken place inside the toilet when the complainant came home for lunch from school. The grandmother of the complainant was in the kitchen on the both occasions. However, the complainant had not either called out for help or told the grandmother about any of these two incidents. According to the complainant, she was afraid that grandmother would tell her uncle.
7. The accused admitted in his evidence that he had been a frequent visitor to the house of the complainant during the year 2016. According to him, he had ignored one of her sexual advancement in 2016.
8. Having taken into consideration the evidence of the complainant, the nature of the relationship the accused and the complainant had in 2016, and the demeanour and the manner the complainant gave her evidence in respect of the first two counts, I am satisfied that the accused had penetrated into the vagina of the complainant with his penis on those two occasions in 2016. Since the complainant was under the age of 13, I do not concern whether the complainant had given her consent and willingly took part in these two sexual intercourses with the accused.
9. In view of the above findings, I find the prosecution has proven beyond reasonable doubt that the accused had penetrated into the vagina of the complainant with his penis on two occasions in 2016. As a result of this finding, I do not find any cogent reasons to disagree with the majority opinion of the assessors that the accused guilty of the first two counts of Rape.

10. In respect of the third, fourth and fifth counts, it appears that the explanation given by the complainant regarding her continuous engagements and interactions with the accused irrespective of her allegation of continuous sexual abuses by the accused, creates a doubt whether she engaged in consensual sexual intercourse with the accused on those three occasions in 2017. She had an opportunity to alert her aunty when she was at Naitaga with the accused. Moreover, she decided to stay back with the accused after collecting firewood, though she had an opportunity to go back home with his mother. On the last occasions, she had gone back to the house of the accused even after he tried to close her mouth and pulled her when she went there earlier on her way to the canteen.
11. Accordingly, I find the prosecution has failed to prove beyond reasonable doubt the accused had penetrated into the vagina of the complainant with his penis without her consent on those three occasions in 2017.
12. The accused in his evidence admitted that he had sexual intercourses with the complainant on three occasions in 2017. He is a cousin of the complainant and closely knew her. Hence, it is clear that he knew the complainant was a young person of the age between 13 and 16 years. Wherefore, I am satisfied the prosecution has proven beyond reasonable doubt that the accused guilty of defilement of young person between 13 and 16 years of age in respect of those three occasions in 2017.
13. In consequence of the above findings, I do not find any cogent reasons to disagree with the majority opinion of the assessors that the accused not guilty of the third, fourth and fifth counts of Rape, but guilty of three alternative counts of Defilement of young person between 13 and 16 years of age.
14. In conclusion, I find the accused guilty of first and second counts of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act and convict him for the same accordingly.
15. Moreover, I find the accused not guilty of the third, fourth and fifth counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and acquit from the same accordingly.

However, I find the accused guilty of three alternative counts of Defilement of young person between 13 and 16 years of Age, contrary to Section 215 of the Crimes Act and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
11th December 2019

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