

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

**Criminal Case No.: HAC 136 of 2015**

**STATE**

**V**

**SAINIVALATI SENILEBA**

**Counsel** : Mr. J. Niudamu for the State.  
: Ms. V. Diroiroi with Ms. J. Raman for the Accused.

**Dates of Hearing** : 29 and 30 July, 2019  
**Closing Speeches** : 31 July, 2019  
**Date of Summing Up** : 01 August, 2019  
**Date of Judgment** : 02 August, 2019

---

**JUDGMENT**

---

*(The name of the complainant is suppressed she will be referred to as "TR").*

1. The Director of Public Prosecutions charged the accused by filing the following information:

**COUNT ONE**

**REPRESENTATIVE COUNT**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009.

*Particulars of Offence*

**SAINIVALATI SENILEBA**, between the 1<sup>st</sup> day of January, 2014 and 31<sup>st</sup> day of December, 2014 at Vatussekiyasawa Village, Rakiraki, Ra in the Western Division, penetrated the vagina of “**TR**” with his penis without the consent of the said “**TR**”.

**COUNT TWO**

**REPRESENTATIVE COUNT**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009.

*Particulars of Offence*

**SAINIVALATI SENILEBA**, between the 1<sup>st</sup> day of January, 2015 and 30<sup>th</sup> day of June, 2015 at Vatussekiyasawa Village, Rakiraki, Ra in the Western Division, penetrated the vagina of “**TR**” with his penis without the consent of the said “**TR**”.

**COUNT THREE**

*Statement of Offence*

**ATTEMPTED RAPE**: Contrary to section 208 of the Crimes Act No. 44 of 2009.

*Particulars of Offence*

**SAINIVALATI SENILEBA**, on the 26<sup>th</sup> day of June, 2015 at Vatussekiyasawa Village, Rakiraki, Ra in the Western Division, attempted to penetrate the vagina of “**TR**” with his penis without the consent of the said “**TR**”.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of counts one and three and unanimously not guilty of count two.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.

4. The prosecution called three witnesses, for the defence the accused remained silent and called one witness.
5. The complainant informed the court in 2014 she was 15 years of age and a Form 5 (year 11) student in the month of January, at around 9 pm the complainant was having a conversation with one Emosi who had come to the village to attend a function.
6. After Emosi left, the complainant was at Bu Alumeci's house when Makelesi the wife of the accused came and told her that the accused was calling her. The accused is the pastor of their church and the cousin brother of her brother-in-law Eremasi who is married to her sister Mereani.
7. The complainant followed Makelesi to the house of the accused beside the house was a shed, after a while the accused came into the shed and asked her why she was talking to Emosi. The complainant told the accused that Emosi wanted to have a relationship with her but she had refused.
8. Upon hearing this, the accused told the complainant that he wanted to have a relationship with her she refused and said that he was her pastor, married with three children and many years older than her. The accused then took the complainant to Bu Alumeci's compound again he told the complainant that he wanted to have a relationship with her and he also wanted to have sexual intercourse with her.
9. When the complainant refused the accused threatened her by saying *"if we don't have sex, I am going to tell Eremasi that you talking to Emosi and when you go I will kill you."* Upon hearing this, the complainant got scared and as a result of this threat she agreed to have sex with the accused.
10. The accused made the complainant lie on the ground pulled down her skirt and her panty then removed his pants and went on top of the complainant

and inserted his penis into her vagina and had sexual intercourse for about five minutes.

11. The complainant felt pain in her vagina, after this she wore her panty and skirt and went into Bu Alumeçi's house. The complainant did not tell anyone about what the accused had done to her since she was scared the accused will come and kill her. Thereafter the accused had sexual intercourse with the complainant on many occasions.
12. The complainant and the accused used to have sexual intercourse in the accused's house when his family members were not at home and sometimes beside the house of the accused. On her 16<sup>th</sup> birthday in 2014 the accused had organized a birthday party for the complainant, after the birthday party had finished the accused told the complainant if her sister could not afford to buy her things he will give it to her. The last time the complainant had sexual intercourse with the accused was in June, 2015.
13. From January, 2014 till June, 2015 the complainant agreed to have sexual intercourse with the accused because the accused had threatened her. On 24<sup>th</sup> June, 2015 her sister Mereani asked her why the accused kept on calling her. The complainant did not tell her sister anything. Shortly after the complainant went to her sister and told her the accused was having sexual intercourse with her. Upon hearing this, Mereani told the complainant that she was going to inform her husband Eremasi.
14. On 26<sup>th</sup> June, 2015 the complainant was sleeping in her bedroom with her niece when the accused came into the bedroom, he pulled her blanket away, pulled down her skirt and went on top of the complainant. The accused said this was a good time to have sexual intercourse since Eremasi and Mereani were sleeping.
15. After the complainant refused the accused pulled her skirt up, also pulled her hand and slapped her mouth. After the accused went away the

complainant went to her sister's room and informed her about what the accused had done to her. This was the second time the complainant had told her sister about what the accused had done to her, at this time Mereani told her husband, Eremasi. After what the accused had done she felt hurt, embarrassed and scared since the accused had threatened her.

16. The complainant agreed she would talk to the accused almost everyday reason being he kept on coming to call her or he would call her to go to his house. She would sit on the bench with the accused outside his house. The house of the accused was near the complainant's house.
17. In 2014, both the complainant and the accused entered into a relationship she would accompany the accused to Suva to sell mangoes, also go with the accused to the Ra Sports ground where she got a chance to be at the ticket booth and also they would go to town together.
18. At one time while talking to the accused she had become emotional this is when the accused came and embraced her and both kissed each other. In 2014 the accused used to buy her clothes, sanitary needs and also gave her some money. On 24<sup>th</sup> June, 2015 the complainant's sister had asked her about her involvement with the accused.
19. The complainant disagreed on 26<sup>th</sup> June, 2015 she had planned to meet the accused in her bedroom at 4 am and that she had kept the door open. When the accused had come into her bedroom he wanted to have sexual intercourse with her she maintained the accused had pulled her hair and also slapped her and had come on top of her and pulled down her skirt.
20. Before this incident the complainant had already told her sister what the accused was doing to her. She denied Makelesi had confronted her in 2015 about her affair with the accused. After 26<sup>th</sup> June, 2015 the complainant's affair became known so she went to the house of the accused with her sister and brother-in-law. She admitted having an affair with the accused and also

both the complainant and the accused admitted that they will end their relationship.

21. During this meeting she had sought forgiveness from the wife of the accused together with the accused. The accused was serious about the relationship but she was not. It was only when her sister became suspicious about her relationship with the accused that she cried rape.
22. The second witness the sister of the complainant, Mereani Kanadroka informed the court, one afternoon she was at home when the complainant came back from school she asked the complainant what happened the complainant did not say anything.
23. After having her shower the complainant came to the witness and said that she wanted to say something. The complainant told the witness that it has been for a long time now that she has been having sexual intercourse with the accused. The witness asked the complainant why she did not tell her first time it had happened. The complainant replied she was afraid of the witness and the accused because he had threatened her that if she told anyone he will kill her.
24. In June, 2015 during night time the witness with her husband and the complainant went to the house of the accused. During the discussions about the affair between the accused and the complainant the accused did not say anything but the complainant admitted having an affair with the accused. After seeing the behaviour of the accused and the complainant the witness became suspicious that something was going on between the two so she questioned the complainant about her relationship with the accused.
25. The final prosecution witness Constable Sailosi Bawaqa informed the court that on 7<sup>th</sup> August, 2015 he had caution interviewed the accused at the Rakiraki Police Station, Crime Office Sgt. Aminiasi Tuvura the Crime Officer was the witnessing officer.

26. The caution interview of the accused in the iTaukei language dated 7<sup>th</sup> August, 2015 and the English translation were marked and tendered as prosecution exhibit Nos. 1 and 2.
27. The witness agreed that prior to the interview he had read the complainant's statement and on the day of the interview the Crime Officer had told him to match the complainant's statement with the accused's interview. The witness could not recall if the accused had stated during the interview that he had threatened the complainant.
28. For the defence Makelesi Tuvou the wife of the accused informed the court that in 2015 the witness resided at Vatusesiyasawa Village with her husband she knew the complainant who lived two steps away from her house. In February, 2015 the witness had a discussion with the complainant where she asked her about her behaviour towards her husband.
29. The witness explained whenever the complainant would come to her house she would stand on the doorway and look at her husband and shortly after her husband would go outside to meet the complainant. The witness was observing this behaviour of the complainant for some time when she met the complainant she asked her, "*Are you having a relationship with my husband, an affair?*" The complainant denied this.
30. The witness would also see the complainant and the accused sitting very close to each other on the bench outside their house. This made her suspicious about what they were doing. The day after she had confronted the complainant, Mereani, Eremasi and the complainant came to her house.
31. During the discussions the accused admitted he was having an affair with the complainant and he asked for forgiveness. The complainant also agreed

that she was having an affair with the accused. At this time Mereani stood up and slapped the complainant forcefully held her hand and both went outside the house.

32. After carefully considering the evidence adduced by the prosecution and the defence I do not accept the complainant as a truthful and reliable witness. The demeanour of the complainant was not consistent with her honesty she was not serious most of the time when giving evidence she was smiling every now and then which gave me the impression that she was in court for the sake of it.
33. Furthermore, it is implausible to accept that the complainant after being raped in January, 2014 behind Bu Alumeci's house would continue to have sexual intercourse with the accused in his house when his family members would not be at home and/or beside the house of the accused whenever an opportunity presented itself.
34. I do not accept that the accused had threatened the complainant that he will kill her if she does not have sex with him from what the complainant told the court they is no doubt that she was a willing partner who had consented to have sex with the accused on every occasion as mentioned by her. The complainant was 15 years old and a year 11 student at the time judging from her demeanour in court the complainant struck me as a person who could not be pushed into doing something against her will.
35. The complainant confidently narrated her relationship and affair with the accused which indicated that she had a strong character to resist any unwarranted pressure from anyone. From the evidence, the complainant was undeterred she used to spend time with the accused away from the village, went to his house when his family members were not at home and in full view of the accused wife the complainant would enter the house of the accused and sit with the accused outside his house.



36. The complainant was also not hesitant to admit about her relationship with the accused during the meeting in the presence of her elder sister and brother-in-law with whom she was staying suggests to me that complainant did not tell the truth when she said she did not tell her sister anything because she was afraid of her sister. Bearing this in mind if the accused had indeed threatened the complainant that he will tell Eremasi that she was talking to Emosi would in my judgment have had no impact on the complainant.
37. As this relationship progressed the complainant's behaviour made her sister suspicious so she questioned the complainant, it was here the complainant admitted having a relationship with the accused but to save herself she cried rape.
38. The complainant also told the court that she told her sister twice about what the accused had been doing to her yet Mereani told the court of only one occasion she came to know about the complainant's sexual relationship with the accused and this was after she had questioned the complainant.
39. Mereani was a truthful witness this court accepts her evidence that it was her suspicion that led to her questioning of the complainant. Mereani did not tell the court about the complainant telling her that the accused attempted to rape the complainant in her house. The complainant told the court that as soon as the accused attempted to rape her she went and informed Mereani.
40. It is a mystery as to how the accused was able to get to the bedroom of the complainant. Again the complainant did not tell the truth when she denied planning to meet the accused in her bedroom at 4 am when everyone was asleep. I have no doubt in my mind that it was the complainant who had left the door open for the accused to come in.

41. The complainant also did not tell the truth when she said she had told her sister about the accused coming into her bedroom and attempting to rape her because I am sure if this was true Mereani would have informed the court of this particularly when it was her house where this alleged incident had happened. The admission of threat by the accused is mentioned in the caution interview at question and answer 40 as follows:

*“What did Titilia agree for you to have sex with her?”*

*Ans. I just questioned her went I saw Onesimo came out from our kitchen and followed by her. I then just threaten her if she never agree for us to have sex, I will informed her to Eremasi so she agree for us to have sex with her.*

42. The interviewing officer agreed that he was matching the accused interview with what the complainant had stated in the police statement. This suggests to me that the answer at Q. 40 of the accused caution interview was a fabrication by the interviewing officer to match the statement given by the complainant. Moreover, the interviewing officer could not recall whether the accused in his caution interview had told him that he had threatened the complainant.

43. The caution interview does not say anything about the accused threatening to kill the complainant but only about the threat to tell Eremasi. When the caution interview is compared with the evidence of the complainant there are doubts in regards to the truth of the admission at Q. 40 of the interview. Also it is to be noted that when there was a meeting at the house of the accused the issue of attempted rape was never raised by the complainant she clearly only admitted to having sexual relationship with the accused.

44. There are lots of doubts in this case, the benefit of this doubt must go to the accused.

45. This court is not satisfied beyond reasonable doubt that the accused between 1<sup>st</sup> day of January, 2014 to 30<sup>th</sup> June 2015 had penetrated the

vagina of the complainant with his penis without the consent of the complainant.


46. This court is also not satisfied beyond reasonable doubt that the accused on 26<sup>th</sup> June, 2015 had attempted to penetrate the vagina of the complainant with his penis without her consent.

47. In view of the above, I overturn the unanimous opinion of the assessors that the accused is guilty of count one being one representative count of rape and count three being one count of attempted rape. I accept the unanimous opinion of the assessors that the accused is not guilty of count two being one representative count of rape.

48. For the above reasons, the accused is acquitted of all the three counts he is charged with.

49. This is the judgment of the court.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

02 August, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**