

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 77 of 2020
[CRIMINAL JURISDICTION]

STATE

V

ELIKI RAOMA

Counsel : Ms. S. Tivao for the State
Ms. M. Chand with Mr. K. Verebalavu for the Accused

Hearing on : 03 - 06 November 2020

Summing up on : 06 November 2020

Judgment on : 06 November 2020

[The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "SN". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said complainant.]

JUDGMENT

1. The accused was charged with the following offences;

FIRST COUNT
(Representative Count)
Statement of Offence

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

Particulars of Offence

ELIKI RAOMA between the 1st September 2019 to the 9th February 2020 at Draubuta Village, Nausori, in the Eastern Division, penetrated the vagina of **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, with his finger.

SECOND COUNT
(Representative Count)
Statement of Offence

Indecent Assault: contrary to Section 212 of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA between the 1st September 2019 to the 9th February 2020 at Draubuta Village, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, by touching her buttocks.

THIRD COUNT
Statement of Offence

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

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, penetrated the anus of **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, with his finger.

FOURTH COUNT
Statement of Offence

Rape: contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, penetrated the mouth of **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, with his penis.

FIFTHCOUNT
Statement of Offence

Sexual Assault: contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, by licking her anus.

SIXTH COUNT
Statement of Offence

Indecent Assault: contrary to Section 212 of the Crimes Act 2009.


Particulars of Offence

ELIKI RAOMA on the 10th February 2020 at Draubuta Village, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SISILIA RUTH NAYACAVOU**, a child under the age of 13 years, by kissing her lips.

2. At the close of the prosecution case, upon inquiry, the prosecutor agreed that the first count is not made out. The counsel for the defence submitted that there is no case for the accused to answer on the first count and also on the fifth count. Having looked at the evidence led, it was clear that there was no evidence on count one. Though certain evidence came out during cross-examination in relation to licking of the PW1's 'bum' which coincides with the particulars of count five, having considered all the evidence it was clear that on the strength of the evidence the said incident had not taken place on 10/02/20 but on a different date that falls within the period relevant to the first two counts. This is not a situation where there is merely a variance between the evidence and the date of offence in the charge, given the prosecution case as it was presented.
3. Therefore, in terms of section 231(1) of the Criminal Procedure Act 2009, a finding of not guilty was recorded in relation to counts one and five and the case proceeded only in respect of counts two, three, four and six.
4. The assessors have returned with the unanimous opinion that the accused is guilty of counts two, three, four and six as charged.
5. I direct myself in accordance with the summing up delivered to the assessors this date and the evidence adduced during the trial.
6. The prosecutrix ("PW1"), her mother (PW2) and her aunt (PW3) gave evidence for the prosecution. The accused gave evidence in his defence.
7. PW1 was 06 years old. I was satisfied that she had the ability and was intelligent enough to understand the duty of speaking the truth. In my judgment she was a credible witness. I am mindful of the fact that there were certain inconsistencies in her evidence. However those inconsistencies could be explained given PW1's age and her inability to relate to events in a chronological order. In my judgment, those inconsistencies did not affect the credibility of PW1.

8. I found PW2 and PW3 to be credible and reliable witnesses. The evidence given by the two witnesses as to what they witnessed on 10/02/20 could be reconciled. There was no reason for them to lie or fabricate evidence against the accused.
9. Having considered all the evidence, I would reject the accused's version so far as it is inconsistent with the evidence of the prosecution witnesses.
10. Based on the evidence adduced, I find that the prosecution has established the charges in counts two, three, four and six beyond reasonable doubt.
11. In the circumstances, I agree with the unanimous opinion of the assessors.
12. I find the accused guilty of counts two, three, four and six as charged and convict the accused accordingly. I hereby formally acquit the accused on counts one and five.




Vinsent S. Perera
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused**