

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 031 OF 2019

BETWEEN : **STATE**

AND : **ILISONI NAWESI**

Counsel : **Ms. L. Latu for the State**
Ms. G. Henau with Ms. V. Diroiroi for the Accused

Hearing on : **11th of February 2020 – 14th of February 2020**

Summing up on : **20th of February 2020**

Judgment on : **26th of February 2020**

JUDGMENT

1. The accused, Ilisoni Nawesi is charged with 5 counts of Rape, and 4 counts of Sexual Assault alleged as detailed below to have committed on Setaita Loata who is related to him as a niece.
2. The details of the offences that he was charged by the Director of Public Prosecutions are as follows;

COUNT 1

(Representative Count)

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2009 and the 31st day of December 2009, at Natawa, Tavua, in the Western Division, unlawfully and indecently assaulted Setaita Loata.

COUNT 2

(Representative Count)

Statement of Offence

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

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2009 and the 31st day of December 2009, at Natawa, Tavua, in the Western Division, had carnal knowledge of Setaita Loata, a child under the age of 13 years.

COUNT 3

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2010 and the 31st day of December 2010, at Natawa, Tavua, in the Western Division, unlawfully and indecently assaulted Setaita Loata.

COUNT 4

Statement of Offence

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

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2010 and the 31st day of December 2010, at Natawa, Tavua, in the Western Division, had carnal knowledge of Setaita Loata, a child under the age of 13 years.

COUNT 5

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2011 and the 31st day of December 2011, at Natawa, Tavua, in the Western Division, unlawfully and indecently assaulted Setaita Loata.

COUNT 6

Statement of Offence

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

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2011 and the 31st day of December 2011, at Natawa, Tavua, in the Western Division, had carnal knowledge of Setaita Loata, a child under the age of 13 years.

COUNT 7

(Representative Count)

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2012 and the 31st day of December 2012, at Natawa, Tavua, in the Western Division, unlawfully and indecently assaulted Setaita Loata.

COUNT 8

(Representative Count)

Statement of Offence

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

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2012 and the 31st day of December 2012, at Natawa, Tavua, in the Western Division, had carnal knowledge of Setaita Loata, without her consent.

COUNT 9

Statement of Offence

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

Particulars of Offence

Ilisoni Nawesi, between the 1st day of January 2016 and the 31st day of December 2016, at Natawa, Tavua, in the Western Division, had carnal knowledge of Setaita Loata, without her consent.

3. The accused pleaded not guilty to the charges and the ensuing trial lasted for 5 days. The complainant Setaita Loata, her aunt Maria and Dr. Mere

Wakevaletabua, who examined her at the hospital gave evidence for the prosecution while the accused gave evidence on his behalf.

4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors:
 - By majority, found the accused guilty of the counts 1 to 4
 - By majority, found the accused not guilty of the counts 5 to 8
 - Unanimously found the accused not guilty on count 9.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.
6. The sole witness to substantiate on the alleged incidents is the PW2, Setaita Loata. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.
7. PW3, was Maria Adisenirewa, an aunt of Setaita Loata. She has accompanied Setaita to the police station to lodge the complaint. Her evidence is somewhat inconsistent with Setaita's evidence on many important points.
8. As for the history given by Setaita to the PW1, Dr. Mere, she has been having sexual intercourse with the accused since the previous year, to wit 2016.

Analysis

9. The assessors unanimously found the accused not guilty of the 9th count, a rape alleged to have taken place at a bus stand. It is obvious the assessors unanimously rejected the PW2's evidence on that incident. Her evidence was full of inconsistencies, inaccuracies and improbabilities in that.
10. Similarly, the assessors by majority found the accused not guilty of the alleged counts 5 to 8. The alleged counts 7 and 8 refers to an incident allegedly happened at the farm in 2012. The majority of assessors have disbelieved the complainant, Setaita Loata on the said incident. The issue would be in regards to counts 5 and 6. This alleged incident has happened in 2011, at home. In regards to this the

PW2's evidence is quite similar to that of the alleged 1 to 4 counts. I do not see any justifiable reason for the majority of assessors to believe the complainant in regards to the 1 to 4 counts and also to disbelieve her in regards to the 5 and 6th counts.

11. I am mindful that the accused bears no burden to prove his innocence. Therefore even if he has lied or given incorrect instructions, it should not be considered against him. His conduct would not strengthen the prosecution case. The burden of proof should always be with the prosecution.
12. Therefore, first, I will consider whether the prosecution has managed to prove their case. When the evidence of the PW2, Setaita Loata is considered, it has few inconsistencies with in itself (inconsistencies per-se). Further it has some material inconsistencies with the evidence of the PW3 (inconsistencies inter-se). Furthermore, when considered together with the demeanor of the PW2, it creates a substantial doubt on the acceptability and reliability of her evidence.
13. In my view, it would be unsafe for the court to rely on the evidence of the PW2. Therefore, I am compelled to disagree with the opinion of the majority of assessors in regards to counts 1 to 4.
14. In the result, I find the accused not guilty of the counts 1 to 4 and concur with the majority opinion in regards to the counts 5 to 8 and also with the unanimous opinion in regards to count 9.
15. I acquit the accused Ilisoni Nawesi of all 9 counts.
16. This is the Judgment of the Court.



Chamath S. Morais
JUDGE

Solicitor for the Prosecution : *Office of the Director of Public Prosecution, Lautoka*
Solicitor for the Accused : *Office of the Legal Aid Commission, Lautoka*