

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 305 OF 2018S**

**STATE**

**vs**

**SAIRUSI MOROCI**

**Counsels : Mr. S. Komaibaba and Ms. N. Ali for State**  
**Ms. M. Ratidara and Ms. L. Manulevu for Accused**

**Hearings : 14, 15 and 16 September, 2020.**

**Summing Up : 17 September, 2020.**

**Judgment : 18 September, 2020.**

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**JUDGMENT**

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1. On 14 September 2020, the following information was put to the accused, in the presence of his counsel:

***“Count***

***Statement of Offence***

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

***Particulars of Offence***

***SAIRUSI MOROCI, between the 1<sup>st</sup> day of June, 2017 to the 11<sup>th</sup> day of July, 2018 at Coloi Village, Naitasiri in the Eastern Division penetrated the vagina of KT, a child under the age of 13 years, with his finger.”***

2. The accused pleaded not guilty to the charge. The matter then proceeded to trial before myself and three assessors on 14, 15 and 16 September, 2020. On 17 September 2020, I

delivered my summing up to the three assessors. They deliberated for 38 minutes to return with a unanimous opinion that the accused was not guilty as charged.

3. Obviously, the three assessors had rejected the prosecution's version of events. It also meant that they were not sure of the truth or otherwise of the complainant's allegation.
4. I had reviewed all the evidence called in the trial and I had directed myself in accordance with the summing up I gave the assessors yesterday.
5. In my view, the three assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
6. Although as a trial judge, I am not bound by the three assessors' opinion, they are there to assist me make a decision on whether or not the accused was guilty as charged. The assessors represent the public and their opinions must always be respected. At the end of the day, the court's decision will be based, as it should be, on the totality of the evidence.
7. This case concerned a rape allegation by a 12 year old female complainant (PW1). The law puts the burden to prove the allegation beyond reasonable doubt on the prosecution throughout the trial. The burden is not on the accused.
8. As with most child rape cases, it was often mandatory for prosecutors to have those essential child friendly advocacy skills to put the child complainant at ease in the courtroom to enable them to relive their ordeal in the courtroom. Then the prosecution had to slowly take them through describing what happened to them in terms of satisfying beyond reasonable doubt the elements of the offence of rape. And in doing the above, the prosecution must resist the temptation of being shy to describe the body parts, and being caught up in the emotion of the child complainant's story.
9. Furthermore, the law of evidence must be strictly complied with. In this case, the rape allegation was fundamentally based on what the child complainant saw the accused doing

to her, at the material time. It was therefore a case of visual identification. Therefore compliance with the law established by R v Turnbull [1976] 3 All ER. 549 (a five judge court) on identification was absolutely essential. This law had been law in Fiji since 1977. The prosecutor must elicit evidence from the child complainant, while examining her in chief, to satisfy the test in R v Turnbull (supra). Satisfying the test will increase the quality of the child complainant's identification evidence, making it more acceptable to the assessors and the trial judge. If the prosecutor does not comply with the above law, the danger of it not been able to prove the case beyond reasonable doubt does arise.

10. In this case, the test in R v Turnbull (supra) was not complied with. As a result, the child complainant's identification evidence against the accused was already perceived as suspect. When the accused chose to give evidence denying the allegation, it further damaged the child complainant's identification evidence, which had not been run through the R v Turnbull (supra) test. When you put the child complainant's version against the accused's version, without any emotional attachment to either versions, there was obviously a reasonable doubt in the prosecution's case. And if there was a reasonable doubt in the prosecution's case, the law required the accused to enjoy the benefit of that doubt.
11. The above was what happened in this case. I accept the three assessors' unanimous not guilty opinion. I find the accused not guilty as charged. I acquit him accordingly.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused** : **Legal Aid Commission, Suva.**