

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

**CRIMINAL CASE NO. HAC 37 OF 2019**

**BETWEEN** : **STATE**

**AND** : **SAIMONI PITA KORO**

Counsel : Mr. T. Tuenuku for the State  
Ms. S. Ali for the Accused

Hearing on : 03<sup>rd</sup> of August 2020  
Summing up on : 04<sup>th</sup> of August 2020  
Judgment on : 12<sup>th</sup> of August 2020

(The name of the complainant will be suppressed and will be referred to as S.M)

**JUDGMENT**

1. The accused, Mr. Saimoni Pita Koro was charged with 8 counts, initially. The matter was taken up for trial and at the conclusion of the prosecution case the court has acquitted the accused of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> counts as the prosecution has failed to adduce sufficient evidence. The defense was called only in respect of the 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> counts.
2. Those charges were;

**COUNT 1**

***Statement of Offence***

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

***Particulars of Offence***

Saimoni Pita Koro, between the 01<sup>st</sup> day of January 2016 and the 31<sup>st</sup> day of December 2016 at Delana Settlement, Soa Village, Nakorotubu, Ra in the

Western Division, had carnal knowledge of S.M. a child under the age of 13 years.

**COUNT 6**

***Statement of Offence***

**INDECENT ASSAULT:** Contrary to section 212(1) of the Crimes Act of 2009.

***Particulars of Offence***

Saimoni Pita Koro, on the 17<sup>th</sup> of February 2019 at Soa Village, Nakorotubu, Ra in the Western Division, unlawfully and indecently assaulted S.M. by kissing her mouth.

**COUNT 7**

***Statement of Offence***

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

***Particulars of Offence***

Saimoni Pita Koro, on the 17<sup>th</sup> of February 2019 at Soa Village, Nakorotubu, Ra in the Western Division, unlawfully and indecently assaulted S.M. by sucking her breast.

**COUNT 8**

***Statement of Offence***

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

***Particulars of Offence***

Saimoni Pita Koro, on the 17<sup>th</sup> of February 2019 at Soa Village, Nakorotubu, Ra in the Western Division, had carnal knowledge of S.M. without her consent.

3. The accused had pleaded not guilty to all the charges and the ensuing trial lasted for a day. The complainant S.M gave evidence for the prosecution while the accused having understood his rights, elected to remain silent exercising his constitutional right and not to call any witnesses on his behalf.

4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the above 4 alleged counts.
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 PW1, S.M. 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. On the other hand the PW1, SM is presently 16 years old and she was only about 12 to 15 years old when the purported incidents alleged to have happened to her. Furthermore, the accused is her biological father and her mother has passed away in 2013. Therefore, we should not adopt the same standards especially regards to the demeanor, we adopt in evaluating adult witnesses evidence, in respect of this child's evidence.

### **Analysis**

8. When analyzing the above evidence I am mindful that only direct evidence which relates to the alleged incidents is the evidence of the PW1. I am also mindful that law does not require any corroboration of the complainant's evidence as per section 129 of the Criminal Procedure Act. Therefore, the ultimate question would be whether her evidence would be trustworthy and reliable.
9. The PW1 in giving evidence initially said that her father did not do anything to her. However, later she gave evidence that her father raped her in 2016 and explained the incidence in detail. The explanation offered for the deviance was fear borne by the expressions of the relatives of the accused. Though her evidence was taken in a closed court, I observed many of the accused's relatives' presence in court when the case was called in the morning. Having observed the witness and the accused during her entire evidence, I accept her explanation.
10. She came out with a different incidence alleged to have occurred than the alleged in the counts 2 to 5. That happened during the time she did not open up

with the proper version of events. Since she did not come up with the proper evidence the accused was acquitted of the 2<sup>nd</sup> to 5<sup>th</sup> counts. The fact that the accused is the father of the witness, who brought her up and the family circumstances may have reserved her from telling all the incidents.

11. It is suggested on instruction that SM was having an affair with a boy and the accused questioned her in that regard and when she refused to answer has slapped her. The witness admitted of having had an affair and her father questioning her. However she denied that as the reason for the accused's slapping. Having observed the demeanor of the witness, and the evidence given by her I am convinced that her evidence is credible and acceptable.
12. The prosecution has sufficiently proved the elements of the alleged 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 8<sup>th</sup> counts. The cross examination by the defense fails to create a reasonable doubt in the prosecution case.
13. I acquit the accused of the alleged counts of 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup>.
14. I concur with the opinion of the assessors and accordingly convict the accused Saimoni Pita Koro of the 1<sup>st</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 8<sup>th</sup> counts as alleged.
15. This is the Judgment of the Court.



  
**Chamath S. Morais**  
**JUDGE**

**Solicitor for the Prosecution**  
**Solicitor for the Accused**

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