

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 334 OF 2020S**

**STATE**

**VS**

**TEVITA BOSE**

**Counsels : Ms. K. Semisi and Mr. L. Baleilevuka for State  
Ms. R. Bainivalu for Accused**

**Hearings : 10, 11 and 12 May, 2022.**

**Judgment : 13 May, 2022.**

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**JUDGMENT**

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1. On 10 May 2022, in the presence of his counsel, the following information was read over and explained to the accused:

**"Count 1**

***Statement of Offence***

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

***Particulars of Offence***

***TEVITA BOSE on the 31<sup>st</sup> day of October, 2020 at Kadavu in the Eastern Division, penetrated the mouth of A.B with his penis, without the consent of the said A.B.***

**Count 2**

**Statement of Offence**

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

**Particulars of Offence**

**TEVITA BOSE on the 31<sup>st</sup> day of October, 2020 at Kadavu in the Eastern Division, had carnal knowledge of A.B, without the consent of the said A.B.”**

2. He said, he understood the two counts in the information and he pleaded not guilty to the same. So, the questions that needed to be answered in this case were as follows:
  - (i) On count no. 1, did the accused rape the complainant (PW1) on 31 October 2020, at Kadavu in the Eastern Division?
  - (ii) On count no. 2, did the accused rape the complainant (PW1) on 31 October 2020, at Kadavu in the Eastern Division?
  
3. For the accused to be found guilty of rape, the prosecution must prove beyond reasonable doubt, the following elements:
  - (i) the accused
  - (ii) penetrated the complainant’s mouth with his penis (count no. 1); or
  - (iii) penetrated the complainant’s anus with his penis (count no. 2);
  - (iv) without the complainant’s consent; and
  - (v) he knew, that the complainant was not consenting to 3 (ii) or 3 (iii), at the time.
  
4. The slightest penetration of the complainant’s mouth (count no. 1) or anus (count no. 2), by the accused’s penis, is sufficient to satisfy elements 3 (ii) or 3 (iii) above.
  
5. “Consent” is to agree freely and voluntarily and out of his own freewill. If consent was obtained by force, threat, intimidation or by fear of bodily harm to himself or

by exercise of authority over him, that “consent” is deemed to be no consent. The consent must be freely and voluntarily given by the complainant.

6. It must also be established by the prosecution beyond reasonable doubt that the accused knew the complainant was not consenting, at the time. The court will have to look at the parties’ conduct at the time, and the surrounding circumstances, to decide this issue.
7. On 10 May 2022, the prosecution opened her case. She then called the complainant (PW1) as her first witness. The complainant said, he was born on 2 May 2006. He submitted his birth certificate as Prosecution Exhibit No. 2, to verify the same. On 31 October 2020, the complainant was 14 years old. The complainant was at home in his village at Kadavu. He said, after 7 pm, he was playing cards with his parents, Simeli and other children. He said, after a while, he went outside to visit the washroom. He said, he met the accused in front of the washroom. He said, the accused was his uncle. He said, the accused invited him to watch movies at his home. He said, he didn’t tell his mother that he was going with the accused to watch movies, at his house.
8. The complainant said, they went to the accused’s house. He said, he could smell liquor on the accused. He said, the accused then suggested they go to the village hall. The four photos of the village hall had been shown in the prosecution’s “Booklet of Photos”, which was tendered by consent of the parties, as Prosecution Exhibit No. 1. The complainant said, he did not want to go to the village hall. However, he said, the accused promised to give him \$20 to buy “Bongo”, if they go there. He said, they then went to the village hall. He said, at the village hall, the accused suggested to him that they go under the floor. See Photo No. 1 of Prosecution Exhibit No. 1, next to the steps, on the right. The complainant said, he didn’t want to go under the floor.

9. He said, he asked the accused what they would do under the floor. He said, the accused told him he will give him the \$20 under the floor. He said, they came near the steps shown in Photo No.1 of Prosecution Exhibit No. 1. He said, the accused then pushed him under the floor of the village hall. He said, he pushed him in the back, using his hand. He said, he wanted to flee. However, he said, the accused grabbed his hand and blocked his mouth with his left hand. He said, he was standing behind his back. He said, the accused then took off his clothes. He said, the accused told him to suck his penis, and he was holding his hand to stop him fleeing. The complainant said, he told the accused he won't, but he said, he forcefully opened his mouth and put his penis into the same. The complainant said, the accused then held his head with both his hand, and push his head forward and backward, while his penis was in his mouth (count no. 1).
10. The complainant said, the accused then started "to open my anus". He said, the accused was behind him, and he inserted his penis into his anus, for about 3 minutes. He said, he tried to flee from under the floor of the house by crawling away, but the accused held him tightly with both hands. He said, he did not agree to the accused inserting his penis into his anus and inserting his penis into his mouth, at the time. He said, he tried to stop the above by kicking the accused in the chest, but it was to no avail (count no. 2). The complainant said, he called Isimeli and Epeli (PW3) to assist him. He said, they shone a torch to where they were. The complainant said, the accused stopped doing what he was doing, grabbed his clothes and fled the scene. The prosecution next called the complainant's mother (PW2) and Epeli Ravouvou (PW3), as his next two witnesses. The above was basically a summary of the prosecution's case on the complainant's allegation in count no. 1 and 2.
11. A prima facie case was found against the accused on both counts. He chose to give sworn evidence in his defence, and called no witness. He did not deny inserting his penis into the complainant's mouth, at the material time. He also did

not deny inserting his penis into the complainant's anus, at the material time. In fact, in paragraphs 9 and 10 of the parties' "Agreed Facts", dated 8.4.2022, the accused admitted the above. His defence was that the complainant consented to him inserting his penis into his mouth and anus, at the material time.

12. The court had carefully listened to the complainant's evidence, and had also carefully listened to the accused's evidence. The court had also carefully examined and considered their demeanour, while they were giving evidence in court. The age difference between the two was 23 years. The accused was 37 years old at the time, while the complainant was 14 years old. The complainant was young enough to be his son. When cross examined by the prosecution, the accused admitted it was wrong for him to have sex with the complainant. He said, the complainant was much younger than him, and he admitted what he did to the complainant was not right. After carefully comparing the complainant and the accused's evidence, I find the complainant to be a credible witness, and I accept his evidence and version of events. I find the accused not to be a credible witness, and I reject his version that the complainant consented to the sexual acts in count no. 1 and 2.

13. Given the above, I find the prosecution had proven its case against the accused on count no. 1 and 2 beyond a reasonable doubt, and I find the accused guilty as charged on count no. 1 and 2. I convict him accordingly on those two counts. I order so accordingly.



**Salesi Temo**  
**JUDGE**

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