

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

**CRIMINAL CASE NO.: 009 OF 2012**

STATE

-v-

USAIA LUTUNAIVALU VUNISA

**Counsels** : Mr. S. Babitu for the State

The accused in person

**Date of Trial** : 14 October - 18 October 2013

**Date of Judgment** : 21 October 2013

(Names of the victims are suppressed. They are referred to as KN and CB)

**JUDGMENT**

1. The accused was charged under following counts:

**COUNT 1**

*Statement of Offence*

**INDECENT ASSAULT**: Contrary to Section 212 (1) of the Crimes Decree, 2009.

*Particulars of Offence*

USAIA LUTUNAIVALU VUNISA, on the 1<sup>st</sup> day of January 2012, at Ba in the Western Division, unlawfully and indecently assaulted KN, in that USAIA LUTUNAIVALU VUNISA licked the vagina of KN, a 4 year old.

**COUNT 2**

*Statement of Offence*

**INDECENT ASSAULT**: Contrary to Section 212 (1) of the Crimes Decree, 2009.

***Particulars of Offence***

**USAIA LUTUNAIVALU VUNISA**, on the 1<sup>st</sup> day of January 2012, at Ba in the Western Division, unlawfully and indecently assaulted **KN**, in that **USAIA LUTUNAIVALU VUNISA** rubbed his penis against the vagina of **KN**, a 4 year old.

**COUNT 3**

***Statement of Offence***

**INDECENT ASSAULT**: Contrary to Section 212 (1) of the Crimes Decree, 2009.

***Particulars of Offence***

**USAIA LUTUNAIVALU VUNISA**, on the 1<sup>st</sup> day of January 2012, at Ba in the Western Division, unlawfully and indecently assaulted **CB**, in that **USAIA LUTUNAIVALU VUNISA** licked the vagina of **CB**, a 6 year old.

**COUNT 4**

***Statement of Offence***

**RAPE**: Contrary to Section 207 (1), (2)(a) and (3) of the Crimes Decree, 2009.

***Particulars of Offence***

**USAIA LUTUNAIVALU VUNISA**, on the 1<sup>st</sup> day of January 2012, at Ba in the Western Division, raped **CB**, in that **USAIA LUTUNAIVALU VUNISA** used his penis to penetrate the vagina of **CB**, a 6 year old.

**COUNT 5**

***Statement of Offence***

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

***Particulars of Offence***

**USAIA LUTUNAIVALU VUNISA**, on the 1<sup>st</sup> day of January 2012, at Ba in the Western Division, raped **CB**, in that **USAIA LUTUNAIVALU VUNISA** used his right fore-finger to penetrate the anus of **CB**, a 6 year old.

**ALTERNATE COUNT**

***Statement of Offence***

**INDECENT ASSAULT**: Contrary to Section 212(1) of the Crimes Decree, 2009.

***Particulars of Offence***

**USAIA LUTUNAIVALU VUNISA**, on the 1<sup>st</sup> day of January 2012, at Ba in the Western Division, unlawfully and indecently assaulted **CB**, in that **USAIA LUTUNAIVALU VUNISA** rubbed his right fore-finger along the anus of **CB**, a 6 year old.

2. All three assessors unanimously found accused guilty of 1-5 of the above charges.
3. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
4. Considering the nature of the evidence before the court, I am convinced that the prosecution had proved the case beyond reasonable doubt.
5. I find the verdict of the assessors were not perverse. It was open to them to reach such a conclusion on the evidence. I concur their verdict. Considering all, I find the accused guilty as charged in respect of Count Nos. 1, 2, 3, 4, & 5.
6. Accordingly I convict Usaia Lutunaivalu Vunisa for 1<sup>st</sup> count of Indecent Assault contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009, 2<sup>nd</sup> count of Indecent Assault contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009, 3<sup>rd</sup> count of Indecent Assault contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009, 4<sup>th</sup> count of Rape contrary to Section 207 (1) (2) (a) and (3) of the Crimes Decree No. 44 of 2009, 5<sup>th</sup> count of Rape contrary to Section 207 (1) (2) (b) and (3) of the Crimes Decree No. 44 of 2009.
7. This is the Judgment of Court.

Sudharshana De Silva

**JUDGE**

**AT LAUTOKA**

**On 21 October 2013**

**Solicitors for the State:**

**Solicitors for the Accused:**

**Office of the Director of Public Prosecution**

**In Person**