

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 025/2013

BETWEEN: THE STATE

AND: TOMASI TAVAKATOGA TUIWAILEVU MATENI

COUNSEL: Ms. P. Low for the State

Ms. M. Lemaki for the Accused

Dates of Trial: 22-24/04/2014

Date of Summing Up: 24/04/2014

Judgment: 25/04/2014

[Name of the victim is suppressed. She will be referred to as M.M]

JUDGMENT

[01] The Director of Public Prosecution had preferred the following charges against the above named accused.

FIRST COUNT

Statement of Offence

INDECENT ASSUALT: Contrary to section 212(1) and (2) of the Crimes Decree No: 44 of 2009.

Particular of Offence

TOMASI TAVAKATOGA TUIWAILEVU MATENI, on the 06th day of August 2012, at Savusavu, in the Northern Division, unlawfully and indecently assaulted M.M a 9 year old.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207(1) and 207(2) (b) and (3) of the Crimes Decree No: 44 of 2009.

Particular of Offence

TOMASI TAVAKATOGA TUIWAILEVU MATENI on the 07th day of August 2012, at Savusavu, in the Northern Division, penetrated the vagina of M.M a 9 year old, with his finger.

- [02] The assessors have expressed unanimous opinion that the accused is guilty of 1st and 2nd counts. The unanimous opinion of guilty verdict in respect of 1st and 2nd counts is completely tenable on the basis of evidence considered in accordance with the legal directions that have been made.
- [03] The accused had gone to victim's house twice and committed the offence. On both days the victim had identified him correctly. On the second day her sister also identified the accused.

- [04] The accused giving evidence took up the position that he was attending a Crusade at the relevant dates and time.
- [05] According to the doctor the victim's hymen was not intact. He had examined the victim two days after the incident. Victim was 9 years old at the time of the offence.
- [06] I have considered and evaluated the evidence, applying legal principles contained in my summing-up to the assessors.
- [07] It is also my decision that the accused is guilty of the charges of Indecent Assault and Rape.
- [08] The judgment of this court is that the accused is guilty on charges of Indecent Assault and Rape of M.M. He is convicted accordingly.



P Kumararatnam
JUDGE



At Labasa
25/04/2014