

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 058/2013

BETWEEN : THE STATE

AND : SEVANAIA MIKAELE

COUNSEL : Ms. P. Low for the State
Mr. P. R. Lomaloma for the Accused

Dates of Trial : 19-22/05/2014

Date of Summing Up : 22/05/2014

Date of Judgment : 22/05/2014

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

JUDGMENT

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

The First Count

Statement of Offence

RAPE: *Contrary to Section 149 and 150 of the Penal Code Cap.17.*

Particulars of Offence

SEVANAIA MIKAELE between the 1st day of January 2008 and the 30th day of June 2008, at Vunisalusalu, Cakaudrove in the Northern Division, had the unlawful carnal knowledge of a girl namely I.M. without the said I.M.'s consent.

- [02] The assessors have expressed unanimous opinion that the accused is guilty of charge of Rape. The unanimous opinion of guilty verdict in respect of the charge is completely tenable on the basis of evidence considered in accordance with the legal directions that have been made.
- [03] In this case the accused admits that he had sexual intercourse with consent of the victim. The victim was 14 years and the accused was 43 years old in the year 2008. The accused has children and he looked after the victim as his daughter. The victim says that she was raped by the accused several times after threatening her.
- [04] Susie Weatherall had seen victim crying after she was subjected for sexual intercourse. She had informed this to accused's wife immediately. The accused threatened her not to reveal this to anybody.
- [05] The victim in her history to the doctor claimed she has been sexually assaulted by her uncle since 2008 while she was a Form 2 student of Vaturova Koroalau High School. She became pregnant in 2011 while repeating her Form 3. She claims that she got pregnant due to forceful sexual intercourse by the accused. She had given birth to a child on 01/09/2011. According to the doctor she has been sexually active since 2008. Her hymen is not intact.

- [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 charge of Rape.
- [08] The judgment of this court is that the accused is guilty of charge of Rape of I.M. He is convicted accordingly.



P Kumararatnam
JUDGE

At Labasa
22/05/2014