

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 52 of 2012

BETWEEN:

THE STATE

AND:

PENAIA VALEVESI

Counsel: Mr M. Maitava for State
Ms M. Tarai for Accused

Date of Hearing: 7-10 July 2014

Date of Judgment: 10 July 2014

JUDGMENT

- [1] The Accused, Penaia Valevesi is charged with one count of digital rape. It is alleged that on 20 August 2012, he penetrated the vagina of a 5-year old complainant with his fingers.
- [2] The trial commenced on 7 July 2014. The evidence was concluded on 9 July 2014. The prosecution called three witnesses. The Accused elected to give evidence.
- [3] After the summing up was delivered, the three assessors deliberated for 40 minutes. When the court reconvened to receive the assessors' opinions, the assessors expressed unanimous opinion that the Accused was not guilty of the alleged charge.

- [4] I direct myself in accordance with my directions contained in my summing up to the assessors. I bear in mind that the prosecution carries the burden of proof to establish guilt beyond reasonable doubt. Although the Accused gave evidence, he bears no onus to prove anything.
- [5] To establish guilt, the prosecution must prove beyond reasonable doubt that the Accused penetrated the complainant's vagina with his fingers. Lack of consent is not an issue because it is not in dispute that at the time of the alleged incident the complainant was five years old and was incapable of giving a valid consent under the law.
- [6] The defence case is that although the Accused was present at the alleged crime scene, he did not penetrate the complainant's vagina with his fingers as alleged. The Accused says when the complainant jumped in his bed while he was asleep, he got annoyed with her. He slapped the complainant in her cheek and chased her out of the house.
- [7] The prosecution's case is depended entirely upon whether the complainant told the truth when she said the Accused rubbed her vagina with his fingers. The complainant did not immediately complain to anyone until she was later prodded by her mother Kuini. The complainant told her mother that the Accused has poked his fingers into her private parts. Clearly, the complaint evidence was not volunteered and was not recent to show consistency on the part of the complainant. Nevertheless, I still accept the complainant as a truthful witness based on her demeanour when she gave evidence in court. When the complainant gave evidence she was 6 years old and a class one student. The complainant struck me as a naive but an honest witness. I accept that she told the court the truth when she said the Accused invited her inside a house when she was on her way to the village shop, undressed her and rubbed her vagina with his fingers. I further accept Dr Temo's medical opinion that the injuries noted in the complainant's vagina could have been caused by sexual penetration. I do not accept the defence contention that the injuries could have been caused by a fall. I feel sure that the Accused penetrated the complainant's vagina with his fingers.

- [8] I find the defence version that a 5- year old girl walked into a house for no reason and jumped on the Accused while he was asleep implausible.
- [9] I feel sure of the Accused's guilt and I find him guilty as charged. Accordingly, the Accused is convicted of the charge.



Daniel Goundar

JUDGE

At Labasa
10 July 2014



Solicitors:
Office of the Director of Public Prosecutions for State
Office of the Director of Legal Aid Commission for Accused