



to penetrate the mouth of Seruwaia Liau with his penis without her consent.

*Count 2*

*Statement of Offence*

**RAPE:** Contrary to Section 207(1) and (2) (a) of the Crimes Decree No 44 of 2009.

*Particular of Offence*

**MOHAMMED ISMAIL** on the 8<sup>th</sup> of May 2012 at Bau Settlement, Matawailevu, Nalawa, Rakiraki in the Western Division penetrated the vagina of Seruwaia Liau with his penis without her consent.

*Count 3*

*Statement of Offence*

**INDECENTLY INSULTING A PERSON:** Contrary to Section 213 (1) (b) of the Crimes Decree No 44 of 2009.

*Particular of Offence*

**MOHAMMED ISMAIL** on the 9<sup>th</sup> of May 2012 at Bau Settlement, Matawailevu, Nalawa, Rakiraki in the Western Division intruded into the privacy of Seruwaia Liau by showing his penis in front of the said Seruwaia Liau.

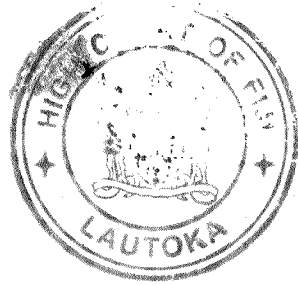
2. After a full trial, the three assessors returned with the unanimous opinion of "Guilty" for all the three charges mentioned above.
3. Ms. Seruwaia Liau, the complainant told court that she is married to you with four kids and was living separately for six months (06) at the time of the commission of the alleged offences. The alleged "Rape" and "Attempted Rape" had taken place in the early hours of 08<sup>th</sup> May 2012 in the kitchen of the complainant's house. Ms. Litia Lewasedua, the eldest

daughter of both the accused and the complainant told that the accused came home on this particular night and went to the kitchen with the complainant to “discuss something”. She had not heard what they “discussed” or not seen what exactly took place in the kitchen.

4. The accused’s version, as suggested by his counsel is that he never went to complainant’s house, but was sleeping elsewhere at the material time. Thus, accused totally denies the allegations. He put a lot of weight to the Medical Examination Form of the complainant. It says that she did not sustain any injuries. It was further argued by the defence that the complainant was late to report the incident to police and her behavior, especially the silence, during the material time cannot be accepted as “normal”.
5. I disagree with the defence contention. One cannot expect a mathematical precision or accuracy in the behavioural pattern of a “victim” of sexual offences. Ms. Liau offered plausible explanations for ‘silence’ and the ‘time gap’ until the police reached her. According to Ms. Litia, she was watching cartoons with her brother when the complainant and accused were talking in the kitchen. The complainant said that she did not want to raise alarms or cries or scream as she did not want her children to see what is happening to her. This is indisputably a correct approach of a mother. On the otherhand though she had not rushed to police right after she escaped or got released from the accused, she had informed the incident to police within couple of hours. That is a reasonable time one could hardly dispute of.

6. On top of that, this court is confident of accepting the testimony of Ms. Litia, the eldest daughter. She was very genuine to tell court that she does love her father “only a little bit” as he left them. This court witnessed her demeanor when offering evidence. She was with full of tears. That was the feeling of a “daughter” and that is not a reason to disqualify her evidence against the accused. Defence could not create any reasonable doubt in her testimony. It confirms the presence of the accused in the complainant’s compound in all material times. On the other hand, the defence witness, Ms. Adiana Nasiga admitted that she cannot say whether the accused went out of the house whilst she was sleeping.
7. It is in the light of Ms. Litia’s evidence, the testimony of the complainant gathers more strength. This court accepts the testimonies of Ms. Liua and Ms. Litia. Their evidence, when taken together, proves the prosecution case beyond reasonable doubt. Therefore, after having re-visited the whole prosecution case and the defence case, I conclude that the prosecution did manage to prove all the individual elements of all three counts beyond reasonable doubt. Defence could not create any reasonable doubt in prosecution evidence. Thus, I do not accept the defence version.
8. I concur with the unanimous opinion of the Assessors. The accused is found “Guilty” to all three charges (3) separately and convicted accordingly.

9. That is the Judgment of Court.



Janaka Bandara  
Judge

At Lautoka  
20<sup>th</sup> August 2014

Office of the Director of Public Prosecution for State  
Naco Chambers for the Accused