

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 67 OF 2012

STATE

-v-

JOSEVA VEIVALI

Counsel : Mr. J. Niudamu for the State

Accused in Person

Dates of Trial : 15th March 2016 – 16th March, 2016

Date of Summing Up : 17th March, 2016

Date of Judgment : 17th March, 2016

(Name of the victim is suppressed. She is referred to as AT)

JUDGMENT

1. The accused was charged with the following count and was tried before three assessors.

Statement of Offence

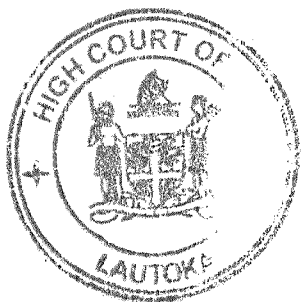
RAPE: Contrary to Section 207(1) and (2) (a) and (3) of the Crimes Decree 44 of 2009.


Particulars of Offence

JOSEVA VEIVALI, between the 01st day of January 2012 and the 24th day of April 2012 at Lautoka in the Western Division, penetrated the vagina of **AT**.

2. Assessors unanimously found the accused guilty of Rape as charged.
3. I direct myself in accordance with my own Summing Up and review the evidence called in the trial. I pronounce my judgment as follows.
4. The prosecution called four witnesses and based its case substantially on the evidence of the victim. I am satisfied that the evidence she gave in Court is truthful and believable.
5. There is no dispute in this case with regard to the identity of the accused. Victim is the biological daughter of the accused.
6. Victim was thirteen years old at the time she gave evidence. She was only seven years old when the incident was reported to Police. She had no apparent reason or motive to fabricate a story against the accused who is her father.
7. Accused had warned the victim not to tell anyone. He had threatened to chop her into pieces if she were to tell anyone. Despite the warning, she ran away from the house and related everything, at the first available opportunity, to her uncle Joseva Loko who is the brother of the accused.
8. Joseva Loko gave evidence and confirmed that he received a complaint from the victim. Victim had told her uncle that accused undressed her and did something which was very painful. Joseva Loko in turn reported the matter to Police.
9. Police recorded the complaint and produced the victim for a medical examination.
10. Doctor who conducted the medical examination found her hymen not intact. He opined that victim had experienced sexual intercourse.
11. I observed victim giving evidence in Court. She was forthright and not evasive. Her demeanor was consistent with her honesty. Evidence presented by the prosecution is consistent, truthful and believable.

12. Accused was explained all his rights including right to Counsel and right to access free legal scheme of the Legal Aid Commission. He waived his rights and represented himself. He was explained his rights to cross examine each of the prosecution witnesses. He exercised that right to cross examine only the victim. He did not challenge evidence of other witnesses.
13. Victim was only seven years old during the period mentioned in the information. All that the prosecution had to prove in this case was that accused penetrated the vagina of the victim with his penis. In light of the direction I gave, it is open for the assessors to find that the accused penetrated her vagina with his penis.
14. I agree with the unanimous opinion of the assessors. Their opinion is not perverse. It is open for them to reach such a conclusion on the evidence led in the trial.
15. Prosecution proved the charge beyond reasonable doubt. Accused is convicted of Rape accordingly.
16. That is the judgment of this Court.




Aruna Aluthge
JUDGE

AT LAUTOKA
17th March 2016

Solicitors: Office of the Director of Public Prosecution for State
Accused in Person