

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 53 of 2015**

**STATE**

**V**

**ILAISA CAKAU**

**Counsel** : Ms. W. Elo for State  
Mr. A. Vakaloloma for the accused

**Date of Hearing** : 18, 19 April 2016  
**Date of Summing Up** : 19 April 2016

**SUMMING UP**

- [1] Ladies and Sir Assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.
- [2] As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for



yourselves. So if I express any opinion on the facts, or if I appear to do so it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.

[3] Counsel for the prosecution and the defence had made submissions to you about how you should find the facts of this case. They have the right to make these comments because it is part of their duties as counsel. However you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community of this trial and it is for you to decide which version of the evidence to accept or reject.

[4] I must direct you to ignore what Mr. Vakaloloma has said about the lack of medical evidence or police evidence. He had no right to say that. It is not for the defence to tell you what evidence should have been called. You will judge this case solely on the evidence that has been called in this case and nothing else. There is no need for the State to call evidence to corroborate what Sally has said. You either believe her evidence or you don't. You are to judge this case on the evidence you have heard in this Court room and on nothing else. You are not to speculate what evidence there might have been or should have been. You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.



- [5] On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until he is proved guilty.
- [6] In our law and for the purposes of this trial, rape is committed when a person penetrates the vagina of a woman with his penis, a finger or an object and where the person doing that does not have the consent of the victim or is reckless to whether she was consenting or not.
- [7] However our law also says that when the victim of penetration is under the age of 13 years he or she is not able to give consent.
- [8] In this case the allegation is that the accused penetrated the vagina of Sally (not her real name) with his finger, to make you sure of the guilt of the accused the Prosecution must prove beyond reasonable doubt the following elements:
1. That is was this accused Ilaisa Cakau, and
  2. That he did in fact use a finger or fingers to penetrate her to some degree. It doesn't have to be full penetration; any penetration even in the slightest degree is enough.
- [9] Ladies and Sir, that is all I wish to say about the law in this case. It is fairly straight forward. I know the case was reasonably short and the evidence will still be fresh in your mind, but it is my duty to summarize the evidence for you, so please bear with me. I remind you that you do not have to accept what I say about the evidence. It is for you alone. If I



leave out something which you think is important, then you will give it the weight you think fit.

- [10] The victim in this case was a girl whose identity I want to protect, so that is why I am calling her Sally. Sally told us that when she was in Class 3 she went to live with the Pastor and his wife. There is a dispute as to whether her parents asked the Pastor or he asked the parents, but it is a matter for you to decide and in any event it is not relevant. On one particular night when she was sleeping he came into the room and fondled her breasts. The next night he came in and shone a light on her body. The third night he went into her room and lay down beside her. It was on the fourth night that he came in, undressed her, spread her legs, tried unsuccessfully to penetrate her with his penis, and then used his hand. When saying that he “poked my hole in the female part” she demonstrated an upward movement of two fingers.
- [11] Sally said that she was born on 31<sup>st</sup> March 2004 which made her 10 years old at the time of the incident and 12 years old now. She identified the accused as the Pastor in question.
- [12] In cross-examination by Mr. Vakaloloma she said that on the fourth night she was woken by the accused undressing her. He was kneeling by her bed. He then lay on top of her. She said that he penetrated her with his hand and caused injury to her private parts. At the time the Pastors wife was away in Labasa.
- [13] She eventually told the village headman about the assaults because she was too scared to tell her mother. She eventually hated the Pastor because of what he had done to her. She denied that she had been lying about the assaults and insisted she was telling the truth.



- [14] Sally's mother was the second witness for the Prosecution. Maria told us that Sally is her eldest child and produced her birth certificate proving she was only 10 at the time. She said that the Pastor and his wife came to her and her husband offering to sponsor Sally's education if she lived with them. One day in 2014 she came home and refused to return to the Pastor's house. When asked why Sally eventually told her that he had fondled her breasts and he used two fingers to "insert inside". Maria demonstrated the upward movement of her first two fingers.
- [15] Well Ladies and Sir, that was the end of the prosecution case. You heard Mr. Vakaloloma protest about the strength of the prosecution case and you heard me rule that there was a case to answer. It is your task to tell me at the end of all the evidence whether the State have proved their case or not. It is not my task to stop the case as Mr. Vakaloloma would have me do at that stage of the trial. I do not want to usurp your function and say anymore at this stage. Mr. Vakaloloma said that his client wanted to give evidence which he did.
- [16] I must now direct you Ladies and Sir that the accused is not obliged to give evidence because he doesn't have to prove anything. The State still has to prove the case beyond reasonable doubt whether he gives evidence or not. But if you think what he says is true or may be true then you will find him not guilty.
- [17] The accused told us that he is a Pastor with the Assembly of God (AOG) church. He has served as a pastor in Kocoma Village, Qamea for the last three years. Although he has 4 children of his own, he and his wife lived alone in the village. Sally came to live with them, he says at her parents' request. He regarded her



as one of his natural children and denied all of the allegations that she had made against him.

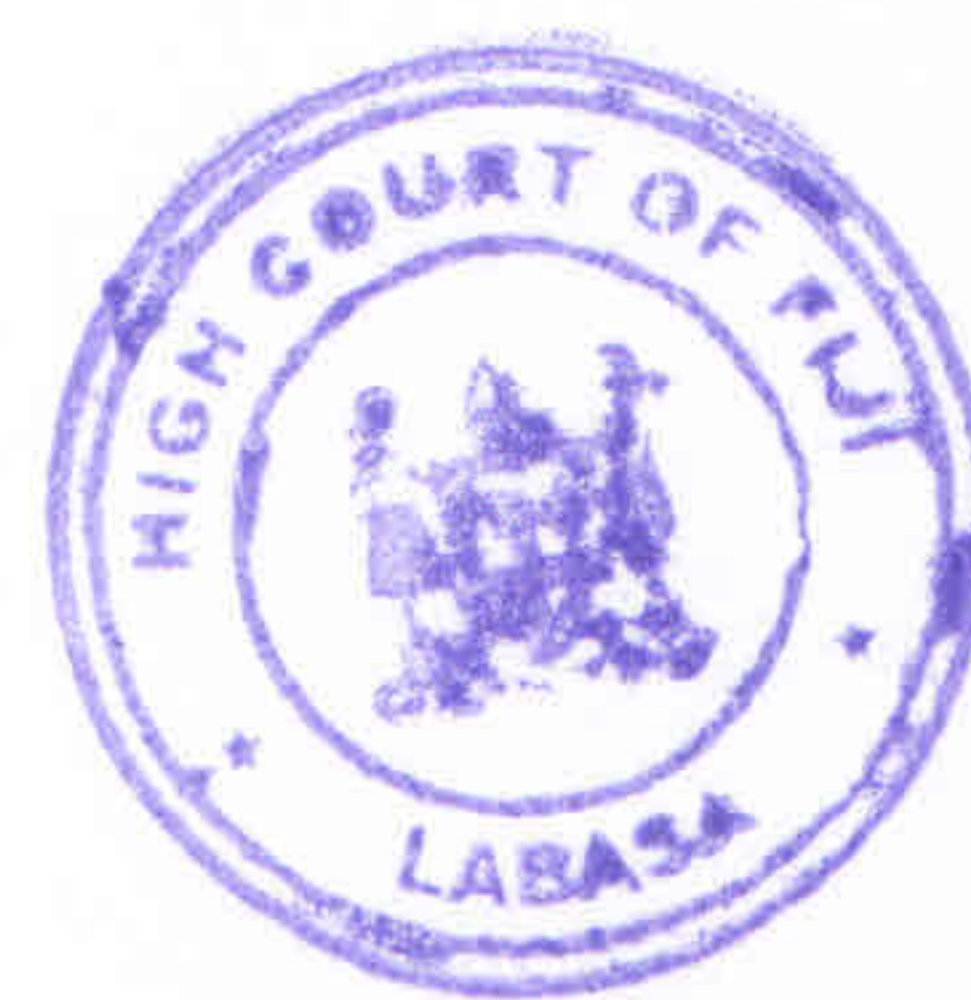
- [18] In referring to the first night fondling, he explained that it was a cold night and he went to check on the children sleeping there. He pulled up Sally's blanket and in doing so she stood up. His hand went up and touched her. It was an accident. As for the second night he denied having a mobile phone that shone a light. He categorically denied invading her with his fingers on the 4<sup>th</sup> night.
- [19] In cross-examination he said that on all 4 nights about 7 to 8 of the AOG children were also sleeping in the house, and explained that it was a possibility that Sally was lying because there was opposition to his church in the village and the villagers wanted to discredit him.
- [20] He agreed that he was financially supporting Sally and that she was enjoying her life there and going to school.
- [21] Well that was all of the evidence in this case. If you think that what the accused has told us is true or maybe true then you will find him not guilty. But if you think that the State has made you sure of the accused guilt in that he did penetrate Sally with one or more finger then you will find him guilty.
- [22] Remember to try and be all agreed on your verdict but that is not strictly necessary. Let a member of my staff know when you are ready and I will reconvene the Court. You may leave us now to deliberate but before you do I will ask Counsel if there is anything they wish me to add or change in this address.



[23] Counsel?



**P. K. Madigan**  
**Judge**



At Labasa

19 April 2016