

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 223 of 2017

STATE

vs.

SIONE FUSI

Counsel: Mr. T. Tuenuku with Ms. S. Alagendra
and Ms. J Fatiaki for the State
Ms. N. Mishra with Mr. Verebalavu K for the Accused

Date of Hearing: 3rd, 5th and 6th December 2018

Date of Summing Up: 10th December 2018

Date of Judgment: 11th December 2018

JUDGMENT

1. The name of the complainant is suppressed.
2. The accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act. The particulars of the offence are that:

Statement of Offence (a)

RAPE: *Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.*

Particulars of Offence (b)


SIONE FUSI, on the 16th day of July 2017, at Navuso village, Nausori in the Eastern Division, had carnal knowledge of AB, a child under the age of thirteen years.

3. The accused pleaded not guilty to this offence; hence, the matter proceeded to the hearing. The hearing commenced on the 3rd of December 2018 and concluded on the 5th of December 2018. The prosecution presented the evidence of three witnesses, including the complainant. The accused opted to exercise his right to remain silence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequent to that, I delivered the summing up.
4. The three assessors returned with unanimous opinion that the accused guilty to this offence.
5. Having carefully considered the evidence presented by the prosecution, the respective closing addresses of the counsel, the summing up and the unanimous opinion of the three assessors, I now proceed to pronounce my judgment as follows.
6. The prosecution alleges that the accused had penetrated into the anus of the complainant with his penis on the 16th of July 2017. The accused and the complainant were living in the same village. The complainant knew the accused as he lives in the same neighbourhood and related to him. On this particular day, the complainant and his sibling had gone to buy ice blocks from the accused. Once the sibling left, the accused had closed the door and asked the complainant to lie down. He had then inserted his penis into the anus of the complainant.
7. The defence suggested to the complainant during the cross examination that the accused was sleeping at that time, therefore none of those incident as alleged by the complainant

had taken place. The complainant denied those propositions and reaffirmed that the accused had penetrated into his anus with the penis of the accused.

8. The complainant was five years old at the time of this alleged incident took place. The complainant was coherent and firm in explaining the incident that took place on the 16th of July 2017. The evidence of grandmother and Doctor Alofa Funaki further corroborated the evidence of the complainant. In view of these reasons, I find the evidence presented by the prosecution as credible and reliable evidence. Accordingly, I accept the evidence of the prosecution as true, credible and reliable evidence.
9. In view of the above reasons, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused had inserted his penis into the anus of the complainant on the 16th of July 2017. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
10. In conclusion, I find the accused guilty to the offence of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act and convict him to the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva

11th December 2018

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.