

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 208 OF 2016

STATE

-v-

ILIKASIO TAULEKA

Counsel : Mr. J. Niudamu for State
Ms. K. Vulimainadave with Ms. Manueli for
Accused

Date of Summing Up : 26th April, 2018

Date of Judgment : 30th April, 2018

(Name of the Complainant is suppressed. She is referred to as RK)

JUDGMENT

1. The Accused is charged on the following Information and was tried before three Assessors.

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree
No. 44 of 2009.

Particulars of Offence

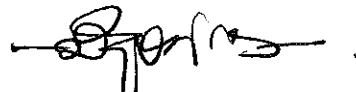
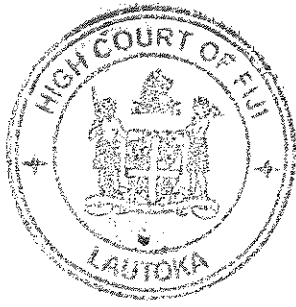
ILIKASIO TAULEKA on the 6th day of October, 2016 at Rakiraki in the
Western Division, penetrated the vagina of RK, an 8 year old girl, with his
finger.

2. At the end of the trial, the Assessors unanimously found the Accused 'guilty' of rape as charged.
3. I reviewed my own summing up. After a careful consideration of the evidence led in the trial, I have decided to accept the unanimous opinion of Assessors. I proceed to give my reasons as follows.
4. Prosecution called three witnesses and based their case substantially on the evidence of RK, the Complainant. Prosecution also relies on recent complaint evidence of Complainant's grandmother, Lavenia Lewa, distress evidence and medical evidence of Dr. Sharma to prove the consistency of the Complainant.
5. The Complainant was 8 years old at the time of the offence and did not have the necessary mental capacity to give consent to the alleged sexual act. The Prosecution had the burden to prove beyond reasonable doubt that the Accused Ilikasio Tauleka had penetrated the vagina of RK with his finger.
6. The Complainant's evidence is that while playing with her cousin, Accused, who is her grand uncle, came and grabbed her hand and pulled her towards the creek. Then Accused took off her panty and touched her vagina. He made his index finger wet and touched inside her vagina. She said it was paining and did not like what Accused did to her. She asked Accused to stop it but he never stopped. Accused ran away from the scene when her grandmother started calling her. Then she wore her panty and went home. She was crying when she reached her grandmother. She told grandmother that the Accused touched her vagina.
7. The Defence case is one of denial. They say that the Accused did not commit the alleged sexual act on the Complainant.

8. There is no dispute that the Accused is Complainant's distant granduncle and that he was living in the same house with the Complainant on the day when the alleged incident happened.
9. The Complainant maintained her consistency when she promptly complained to her grandmother Lavenia soon after the alleged incident. Lavenia confirmed that she received the complaint of a sexual attack. The prompt complaint of the Complainant bolstered the version of the Prosecution.
10. The Complainant was crying and was in a distressed condition soon after the alleged incident. I am satisfied beyond a reasonable doubt that the Complainant's distressed condition was genuine and it was causally connected to the alleged sexual offence. Her conduct is consistent with the rape allegation she made.
11. Dr. Sharma had examined the Complainant 6 days after the alleged incident. In her examination, she had observed injuries in and around the vagina of the Complainant. Doctor found her physical findings, especially the injuries seen in her introitus, consistent with a digital penetration. She ruled out the possibility of this kind of internal injuries having been caused by any other cause than a penetration. Doctor's finding is logical and acceptable.
12. The Complainant was 8 year-old student at the time of the offence. She had no apparent reason to fabricate a case against her grand uncle.
13. The Complainant is a child witness. She understood the nature of the oath administered to her. She understood the obligation to tell the truth in Court. I observed Complainant's demeanor. She is confident and not evasive. I find her to be an honest and credible witness.
14. The Defence challenges Complainant's evidence and says that she did not tell the truth in Court. They say that her evidence is not consistent with the story she had relayed to her teacher.
15. The Complainant admits that she told the police a different story to what she had told the teachers. According to Complainant's evidence, her class teacher Ms. Gounder had been talking to her in Hindi. Ms. Gounder had then called Ms Vuniwabu, who made further inquiries from the Complainant and her cousin

Samu, who was attending the same school with Complainant, to get Complainant's story verified. Samu was the one who was playing hide and seek when the Accused allegedly pulled Complainant's hand. He is the one who had reported to Lavenia that Complainant had gone missing on that day.

16. Lavenia confirmed that it was Complainant's teacher that had reported the matter to police. None of the teachers came to give evidence to say as to what actually was reported to them by the Complainant. Therefore, what the teachers had told police is not evidence in Court.
17. The Complainant said that the statement she gave to police is the truth. There is no evidence that the statement she made to police on the following day is inconsistent with her evidence in Court. Complainant maintained her consistency.
18. The Defence also says that Lavenia did not go to police soon after she had received the information because she had trusted the words of denial of the Accused. Lavenia satisfactorily explained the reason why she did not go to police. She had complained to her small uncle and his wife about the incident but they did not do anything and that's why she eventually decided to complain to police. Accused is the brother of her small uncle's wife.
19. I am satisfied that the evidence of the child Complainant is truthful and believable.
20. The Accused remained silent. That is his right. The Accused is not required to prove his innocence, or prove anything at all. The burden to prove the charge beyond a reasonable doubt is on the Prosecution. That burden was discharged by the Prosecution.
21. There is acceptable evidence that the Accused had penetrated the vagina of the Complainant with his finger. Prosecution proved the charge beyond reasonable doubt. I agree with the unanimous opinion of Assessors.
22. I find the Accused guilty of rape as charged. Accused is convicted accordingly.
23. That is the Judgment of this Court.



Aruna Aluthge

Judge

AT LAUTOKA

30th April 2018

**Solicitor: Office of the Director of Public Prosecution for State
 Legal Aid Commission for Accused**