

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 62 of 2017

STATE

V

ILISONI TIKO

Counsel : Mr. R. Kumar for the State  
Mr. V. Tuicolo with Ms. S. Devi for the Accused

Trial : 1 May 2018

Ruling : 1 May 2018

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "NST"*

**RULING**

**NO CASE TO ANSWER**

1. The Accused in this case was charged with the following Information:

## FIRST COUNT

### *Statement of Offence*

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

### *Particulars of Offence*

**ILISONI TIKO**, between 01 January 2015 to 30 April 2015, at Taveuni in the Northern Division, with his penis, penetrated the vagina of **NST**, a child under the age of 13 years.

## SECOND COUNT

### *Statement of Offence*

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

### *Particulars of Offence*

**ILISONI TIKO**, on 21 July 2016, at Taveuni in the Northern Division, with his finger, penetrated the vagina of **NST**, a child under the age of 13 years.

## THIRD COUNT

### *Statement of Offence*

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

### *Particulars of Offence*

**ILISONI TIKO**, on 15 October 2016, at Taveuni in the Northern Division, with his penis, penetrated the vagina of **NST**, a child under the age of 13 years.

2. In terms of Section 135 of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act), the following facts were admitted between the prosecution and the defence:



1. NST was born on 17 August 2007 and had started living in Taveuni since December 2014, together with her father and step-mother, Emali Qalo Tikoianuca (EQT).
  2. Ilisoni Tiko (IT) was born on 22 August 1960 and is a farmer by profession, where he had been residing at Vuna Village in Taveuni during the years spanning 01 January 2015 to 30 September 2017.
  3. NST is IT's paternal grand-daughter as NST's father is IT's son.
3. The Accused pleaded not guilty; hence the matter proceeded to trial. The Assessors were empanelled and the trial in this case commenced on 1 May 2018. The first witness for the prosecution was the complainant, NST.
4. The complainant testified as follows:
- i. *She currently lives in Wairiki in Taveuni. She has been staying in Taveuni since December 2014. She lives with her father and step-mother.*
  - ii. *She's currently studying in Class 5.*
  - iii. *She has a grandfather named Ilisoni Tiko. He's present in court today (sitting in the Accused box). The first time she met her grandfather was in Bucalevu, when she was in Class 1.*
  - iv. *In the year 2015 she was in Class 2.*
  - v. *The witness was asked as to what happened during the first school term when she was in Class 2. She answered nothing happened.*
  - vi. *The witness was then asked the following questions to which she replied as follows:*
    - Q. Where were you staying during the first school term in 2015?*
    - A. In Bucalevu, I was living with my mother (step-mother) and father.*
    - Q. Did you ever meet your grandfather during this time?*
    - A. Yes*
    - Q. Where did you meet him?*
    - A. He brought some food to us.*
    - Q. Where did he bring the food to?*

A. He brought it to us.

Q. Where were you when he brought the food?

A. I was with my mum in the kitchen. Then he went back again.

Q. When was the next time you saw your grandfather?

A. Every day he used to come to Bucalevu and bring our food.

Q. How is the relation between you and your grandfather?

A. Good.

Q. Why did you say the relation between you and your grandfather was good?

A. He always jokes, saying funny things to me.

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Q. When you were staying in Bucalevu you said your grandfather comes often?

A. Yes.

Q. How often did your grandfather come and see you when you were in Bucalevu?

A. Only sometimes he comes.

Q. Is there any other names you call your grandfather by?

A. I call him kuku.

Q. Is this gentleman the same person as you call kuku?

A. Yes.

Q. Did kuku always tell you jokes every time he saw you?

A. Only sometimes.

Q. What would he do the other times?

A. Nothing.

Q. Are you having any difficulty of remembering the time you spent in Bucalevu?

A. No difficulty to remember.

Q. Usually at what particular time would kuku come and visit you?

A. In the afternoon.

Q. Apart from the afternoon was there any other time that kuku would come and see you whilst you were in Bucalevu?

A. In the morning too.

Q. Apart from the morning did kuku come and see you in the night?

A. No.

Q. You made a complaint to the police?

A. Yes.



Q What was the complainant about?

A. Complaint about my grandfather.

Q. What exactly was your complaint?

A. He did something to me.

Q. What was it that he used to do to you?

A. He didn't do it to me. Only one grandfather from Vatuwaqa.

Q. When you made the complaint to the police why did you make it against kuku and not against the other grandfather (from Vatuwaqa)?

A. Because I already told my mum (step-mum) to go and inform the police that kuku from Vatuwaqa was doing something to me.

Q. What did your step-mother do?

A. She already informed the police.

Q. Do you know what police?

A. Yes Maria (Police Officer Maria)

Q. All the things that kuku from Vatuwaqa did to you was it done to you in Taveuni or Vatuwaqa?

A. In Vatuwaqa.

Q. Who is this kuku from Vatuwaqa?

A. Can't recall his name. But I knew him. We always called him Bubu.

Q. Before coming to Taveuni where were you staying?

A. In Vatuwaqa.

Q. With whom (were you staying in Vatuwaqa)?

A. With my mother and father. My real mother.

Q. Why did you complain to the police about kuku the Accused?

A. Kuku was sending me to the shop and I was late and kuku was informing my father if he can belt me. Then on Monday I go and report him. Then I go and tell the story about my grandfather to some of my friends. There are two girls staying together. They are my friends. So I go and tell some bad stories about my grandfather to them.

Q. Why did you do that?

A. Because I hate him (my grandfather).

Q. Why do you hate him so much?

A. Because he told my father to belt me.



*Q. Apart from telling your father to belt you, did kuku Ilisoni do anything bad to you?*

*A. No.*

*Q. When you told bad stories about kuku to your friends were they the truth or just stories?*

*A. Just a story.*

*Q. Whatever you told the police about kuku is not the truth?*

*A. Yes.*

*Q. When you took your oath today, you took the oath to say the truth?*

*A. Yes.*

*Q. Are you telling the truth in Court?*

*A. Yes.*

*Q. Yesterday when you told State Counsel Amelia Vavadakua, that your statement was the truth, was it the truth or a lie?*

*A. No. I didn't tell the truth.*

*Q. Did anyone force you or coerce you to say what you said in Court today?*

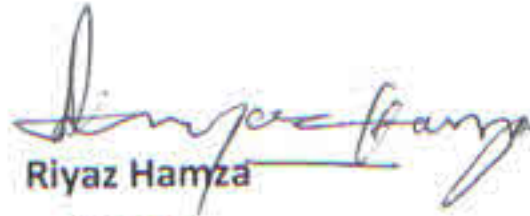
*A. No.*

5. At this stage of the proceedings the learned State Counsel submitted that since the complainant is now denying the allegations made by her against the Accused, he is closing the case for the prosecution. He has no further evidence to offer.
6. The learned Counsel for the Accused made an application in terms of Section 231 (1) of the Criminal Procedure Act that there is no evidence that the Accused committed the offences charged and as such the Court should record a verdict of not guilty against him.
7. Section 231 (1) of the Criminal Procedure Act provides as follows:

*When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence*

that the accused person (or any one of several accused) committed the offence.

8. I find that there is no evidence adduced by the prosecution to establish that the Accused committed the three offences he is charged with. Accordingly, I find that the Accused is not guilty of the three charges and acquit him.

  
Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



AT LABASA

Dated this 1<sup>st</sup> Day of May 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.  
Solicitors for the Accused : Office of the Legal Aid Commission, Labasa.