

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

**Criminal Case No: HAC 66 of 2017**

**BETWEEN:**                      **THE STATE**

**AND:**                                **SETAREKI VUKICANAGAUNA**

**Counsel:**        **Ms A Vavadakua for State**  
                      **Ms K Boseiwaqa for Accused**

**Date of Hearing:**        **04 and 05 June 2018**

**Date of Summing Up:** **06 June 2018**

**Date of Judgment:**    **06 June 2018**

**JUDGMENT**

- [1] After a two-day trial, two assessors have found the Accused guilty of rape while one assessor has found the Accused not guilty. The charge is a representative count of rape.
- [2] It is not in dispute that at the material time, the complainant was 12 years old and incapable of giving a valid consent to sexual intercourse. The Accused is her cousin. The complainant gave evidence that between 26 December 2015 and 8 January 2016, the Accused had sexual intercourse with her on two occasions at his farmhouse in Lekutu. She did not complain about the incidents to anyone until September 2016 when she confided in her teacher that the Accused had sexual intercourse with her. Her teacher gave evidence of the complaint that the complainant had made to her. The complainant's father gave evidence of a traditional apology presented to his family by the Accused's family in which the Accused was present and was crying.

- [3] The defence led evidence from two cousins of the Accused, Jale Valetino and Pita Koroi, who said that the Accused was with them at Namukalau Village between 25 December 2015 and 31 January 2016 attending a function. The Accused elected to remain silent and I draw no adverse inference against him for remaining silent. He does not have to prove anything. The prosecution carries the burden to prove guilt throughout the trial.
- [4] The resolution of the charge against the Accused depends on whether the complainant was a truthful and reliable witness. Obviously, the majority assessors have accepted her account that the Accused had sexual intercourse with her on at least one occasion between 26 December 2015 and 8 January 2016 at Lekutu and rejected the account of the two defence witnesses that the Accused was with them on a different location at the material time.
- [5] When the complainant gave evidence, she struck me as an honest and reliable witness. Her reluctance to report the incident to her parents is understandable. The Accused was an adult male and a relative of the victim. The victim was a child and a primary school student when the incident occurred. She confided in her teacher almost nine months later. I believe her evidence that the Accused had sexual intercourse with her in his farmhouse at Lekutu when she was visiting her farm with her parents and siblings during the Christmas period in 2015. I don't believe that the Accused was with his cousins in Namukalau at the material time. The Accused presented himself in the traditional apology ceremony crying before the complainant's family after the alleged incident was reported to police.
- [6] I am satisfied that the prosecution has proved guilt beyond a reasonable doubt. The Accused is convicted of rape as charged.



A handwritten signature in blue ink, appearing to read 'Daniel Goundar', is written over a dotted line.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for State  
Office of the Director of Legal Aid Commission for Accused