

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

**Criminal Case No.: HAC 125 of 2017**

**STATE**

**V**

**ATAMU PENETE**

**Counsel** : Mr. A. Singh for the State.  
: Ms. V. Narara [LAC] for the Accused.

**Dates of Hearing** : 13, 16, 18, July, 2018  
**Closing Speeches** : 19 July, 2018  
**Date of Summing Up** : 20 July, 2018  
**Date of Judgment** : 23 July, 2018

---

**JUDGMENT**

---

*(The name of the complainant is suppressed she will be referred to as "NP").*

1. The Director of Public Prosecutions charged the accused by filing the following information:

**FIRST COUNT**

*Statement of Offence*

**ATTEMPTED RAPE**: Contrary to section 208 of the Crimes Act 2009.

*Particulars of Offence*

**ATAMU PENETE** on the 22<sup>nd</sup> day of April, 2017, at Lautoka in the Western Division, attempted to have carnal knowledge of "NP" without her consent.

## **SECOND COUNT**

### *Statement of Offence*

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

### *Particulars of Offence*

**ATAMU PENETE** on the 27<sup>th</sup> day of April, 2017, at Lautoka in the Western Division, penetrated the vagina of “**NP**” with his penis, without her consent.

## **THIRD COUNT**

### *Statement of Offence*

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

### *Particulars of Offence*

**ATAMU PENETE** on the 12<sup>th</sup> day of May, 2017, at Lautoka in the Western Division, penetrated the vagina of “**NP**” with his penis, without her consent.

## **FOURTH COUNT**

### *Statement of Offence*

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

### *Particulars of Offence*

**ATAMU PENETE** on the 20<sup>th</sup> day of May, 2017, at Lautoka in the Western Division, penetrated the vagina of “**NP**” with his penis, without her consent.

2. The three assessors had returned with a unanimous opinion that the accused was guilty on all the four counts as charged.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called four (4) witnesses whilst the accused gave evidence for the defence.

5. The complainant in the year 2017 was 14 years of age, a Year 9 student who resided at Velovelo, Lautoka with her parents, four brothers and one sister.
6. On 22 April, 2017 the complainant was at home with her siblings and her father the accused. During the day she asked her father if she could go and watch the inter zone meet at Churchill Park. Her father replied that she is to go first in the bedroom with him, she obliged.
7. In the bedroom she was shocked when her father locked the door and told her in an aggressive tone to lie on the bed. When the complainant was on the bed her father tried to remove her pants and her panty and also tried to kiss her. The complainant pushed him away.
8. After this, she wore her pants and panty and went into the kitchen. The complainant got scared when her father did this to her. She did not tell anyone because she was told by her father not to tell anyone about what he had done to her. The complainant's siblings were outside the house at this time.
9. On 27<sup>th</sup> April in the afternoon the accused came and told her that he wanted to have sex with her. She refused, at this time the accused pulled the complainant's hand and took her to his bedroom. In the bedroom he locked the door, told her to lie on the bed and forcefully removed her pants and panty and inserted his penis into her vagina. He covered her eyes with one of her mother's clothes. The sexual intercourse continued for about 5 minutes.
10. The complainant was frustrated, she did not allow her father to have sexual intercourse with her. She did not tell anyone about what the accused had done to her. He told her if she told anyone both will go to prison so she did not tell anyone.

11. On 12<sup>th</sup> May after dinner the accused told the complainant that he wanted to have sexual intercourse with her. She refused, upon hearing this, the accused pulled her hair and took her into his bedroom. The complainant was crying at this time. According to the complainant her siblings were watching a movie.
12. Inside the bedroom her father took off her clothes and told her to lie on the bed and then inserted his penis into her vagina for about 10 minutes she was frustrated and fearful of what the accused was doing to her. She did not shout for help because he told her not to shout or tell anybody otherwise both will be in trouble. The complainant did not tell anyone because she was afraid her father would do something to her.
13. Finally, on 20<sup>th</sup> May, at about 5.45am the complainant dropped her mother at the road side so that she could go to work. When she returned the accused was in the sitting room. The complainant went to her bedroom but there was no mattress in the room so she went to her parent's bedroom and slept there.
14. When she woke up, she was shocked to see her father sleeping beside her. At this time he forcefully removed the complainant's pants and panty and inserted his penis into her vagina for about 10 minutes.
15. After what her father had done, she wanted to run away from home she was really frustrated and afraid. At this time the complainant heard her siblings calling her from outside the bedroom door. Her father told her not to respond but to wait inside the room. After removing the louver blades of the bedroom he then jumped out of the window.
16. During all the incidents the complainant's mother was not at home but at work.

17. The second witness was Titilia Nasokia the maternal grandmother of the complainant. Her house was about 20 to 30 meters away from the house of the accused.
18. She was very close to all her grandchildren. Her grandchildren would not visit her very often because they were scared of their father. Her observations were that the accused used to beat and swear at his children and she did not feel good about it.
19. The witness recalled on Saturday, 20<sup>th</sup> May she was looking for herbal medicine but could not find it near her house so she went to a coconut tree near the house of the accused which was close to his bedroom. The witness saw the accused standing outside his bedroom fixing the louver blades. This made the witness suspicious. Firstly it was close to 7 in the morning and secondly the clothes he was wearing was a sulu vakatoga or sulu wrap around only.
20. The witness could not stop thinking about what she had seen and she also noticed her granddaughter the complainant was sad and pale not happy and joyful and her school work was affected as well.
21. The witness could not wait anymore so on Saturday 3<sup>rd</sup> June, when the accused was not at home the witness called the complainant to her house and started questioning her. The witness asked the complainant if there was anything going on between her and her father. The complainant nodded, when asked the second time there was no answer, on the third and fourth time the complainant started crying and told her everything her father had been doing to her. The complainant said that her father had sexual intercourse with her on numerous occasions. When Lusiana the complainant's mother came home the witness told her everything the complainant had told her. The matter was reported to the police.

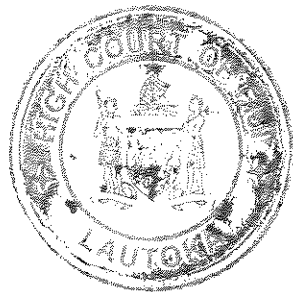
22. The third witness was Lusiana Ratu the mother of the complainant who informed the court that she was married to the accused for more than 17 years and they have 6 children. The complainant was their second eldest child.
23. The accused would verbally abuse their children. The children were afraid of their father. On 3<sup>rd</sup> June, the witness reached home at about 11pm, her mother Titilia Nasokia called her to her house. Her mother told the witness that the accused had sexually assaulted the complainant. At this time the complainant came into the house nodded and said yes to what had happened to her.
24. The witness immediately went to the Police Station to report the matter. At the Police Station she was told to come the next day with the complainant.
25. On 4<sup>th</sup> June, the witness and the complainant gave their police statements and the complainant was taken to Lautoka Hospital for medical examination. When the accused was at the Police Station the witness asked him about the incidents, he denied committing it. After she stated that the complainant cannot lie, the accused admitted that he had done it.
26. The final prosecution witness was Dr. Sainimili Leba she was able to recall examining the complainant on 4<sup>th</sup> June 2017, at the Lautoka Hospital. The Medical Examination Form of the complainant was marked and tendered as prosecution exhibit no. 1.
27. The professional opinion of the doctor was that the hymen was not intact which appeared to be more than 3 days old.
28. The doctor further stated if the penetration of the vagina happened on 20<sup>th</sup> May her opinion was consistent with her medical findings since she did not see any vaginal bleeding or vaginal discharge. The hymen not being intact could be by blunt trauma such as a penis penetrating the vagina.

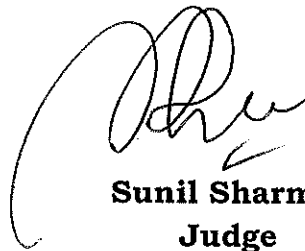
29. The bruises seen on the vaginal area and thigh of the complainant were old injury but the doctor could not say how old they were. According to the doctor the history related to her was consistent with her findings.
30. The accused denied all the allegations made against him he said he has been framed by his mother in law. For more than 10 years now he has not been talking to his mother in law and they did not have a good relationship with each other. The reason is his mother in law keeps telling his children that he was a bad father.
31. The accused stated that he never did whatever is alleged against him. His mother in law hates him and this allegation has been brought against him by his mother in law.
32. I accept the evidence of the complainant as truthful and reliable. She struck me as an honest person, her demeanour showed a person of strong character who could not be influenced or coached or forced by anyone into something against her will.
33. The complainant was able to withstand cross examination and was not shaken or discredited. I have no doubt in my mind that the complainant told the truth in court, her demeanour was consistent with her honesty. When the complainant was giving evidence it was obvious to me that she was scared of her father hence the reason why she had submitted to his unlawful conduct.
34. After the complainant told her grandmother everything the accused was doing to her the matter was promptly reported to the police. The complainant was comfortable with her grandmother so when the complainant was questioned by her grandmother she told her everything the accused was doing to her.

35. The fact that she did not tell her grandmother about the incident of attempted rape by the accused does not affect the reliability of the complainant's evidence at all. A child in the situation and circumstances of the complainant cannot be expected to relay every detail of what she had been through particularly when the alleged perpetrator was her own father.
36. A complaint does not have to disclose all the elements of the offence. The complainant told her grandmother what the accused had done to her which was material and relevant to the unlawful sexual conduct of the accused.
37. The other prosecution witnesses were also truthful and reliable. The grandmother of the complainant was a straight forward witness who was able to express herself clearly on what she had seen and observed. It was her love and affection towards her grandchildren that resulted in her asking the complainant about what she had seen on 20<sup>th</sup> May.
38. This witness was also able to withstand cross examination and I also have no doubt she told the truth in court.
39. The mother of the complainant upon being made aware of the sexual assault on her daughter immediately went to report the matter to the police. There was no allegation against her that she had a motive to implicate the accused. This court also accepts that the accused had made a confession to this witness at the Police Station.
40. The evidence of the doctor is also accepted by this court as reliable her findings are consistent with the examination she had carried out of the complainant.
41. The accused whilst giving evidence was careful not say anything that may put him in some difficulties. He was not forthright and honest in what he told the court. The accused was blaming his mother in law to shift the focus away from him. This court rejects the evidence of the accused as unreliable and unworthy of belief. The defence has not been able to create a reasonable doubt in the prosecution case.



42. This court accepts the evidence of all the prosecution witnesses as truthful and reliable. They were consistent in their evidence as well.
43. This court is satisfied beyond reasonable doubt that the accused on the 22<sup>nd</sup> day of April, 2017 attempted to penetrate the vagina of the complainant with his penis without her consent.
44. Furthermore, this court is also satisfied beyond reasonable doubt that on 27<sup>th</sup> April, 2017, 12<sup>th</sup> May, 2017 and 20<sup>th</sup> May, 2017 the accused had penetrated the vagina of the complainant with his penis without her consent.
45. It is also accepted by this court that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
46. I agree with the unanimous opinion of the assessors that the accused is guilty of one count of attempted rape and three counts of rape as charged.
47. I therefore convict the accused as charged.
48. This is the judgment of the Court.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**  
23 July, 2018

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**