

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 42 of 2017

THE STATE

V

TEVITA RASUAKI

Counsels: Mrs. A. Vavadakua for the State
Mr. H. Robinson for the Accused

Date of Trial: 21 August 2018

Date of Summing Up: 22 August 2018

Date of Judgment: 22 August 2018

JUDGMENT

1. The accused was tried before this court on the following two counts.

FIRST COUNT

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375(1) (a) (i) and (iv) of the Crimes Act 2009.

Particulars of Offence

TEVITA RASUAKI, on 20 April 2017, at Kanakana Village, Tunuloa in the Northern Division, without lawful excuse, threatened **UM** with injury to her person, with intent to cause alarm to **UM**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

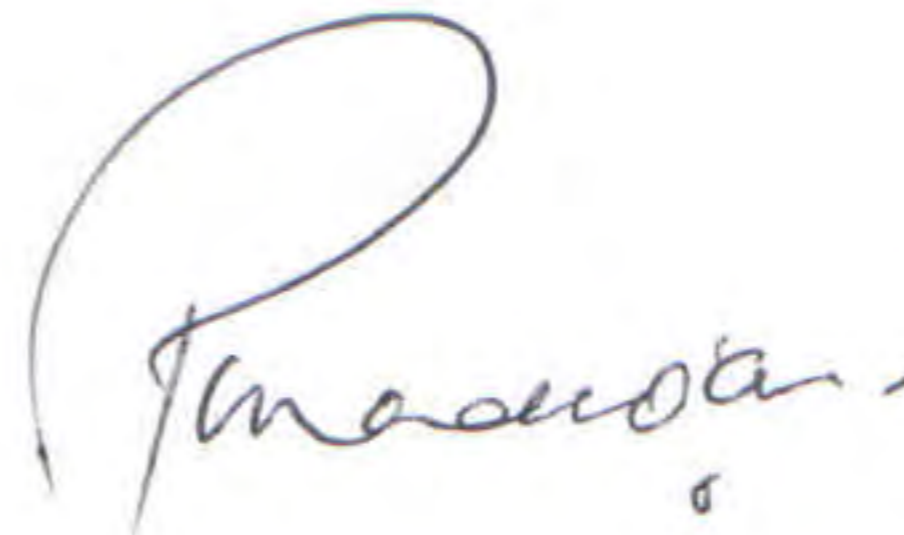
TEVITA RASUAKI, on 20 April 2017, at Kanakana Village, Tunuloa in the Northern Division, penetrated the vagina of **UM**, with his finger, without her consent.

2. After being directed as to the appropriate law and reminded of the facts in a Summing Up, three assessors returned with unanimous opinions of guilty on each of the two counts.
3. The facts of the case as elicited at trial were that on the 20th April 2017, the accused approached the village house of his cousin **UM**. **UM** was at home alone looking after a toddler.
4. He was brandishing a knife and entering the house he took all of his clothes off and fondled **UM**'s breasts. All the time holding the knife, he made her lie down and he raped her with his fingers. She was dressed only in a towel as she had been on her way to bath when he arrived. He threatened to stab her or the toddler if she shouted. **UM** was able to take up the child and

run to where her mother was working and tell her of the incident.

5. A medical examination the following day revealed recent injury to her genitals.
6. The prosecution called the victim UM, her mother to tell of recent complaint and the Medical Officer.
7. The victim UM gave confident and consistent evidence and she was unshaken in cross-examination. She dealt well with inconsistencies arising from a prior inconsistent statement.
8. Her mother told of the anger and tears at the time UM arrived and said that she believed what she was told by her daughter.
9. The accused gave evidence. He gave an odd explanation for his presence in the village that day. He said that he was there to look for a horse to work on his farm and not being able to find one he went to his friend James' house to tell stories.
10. He called James as his witness. While confirming seeing the accused that day in the village, unfortunately James was not able to account for the accused's movements for part of that morning and he contradicted the accused's evidence about the presence of another friend at the time.
11. The witness was of no assistance to the accused.
12. Of course the accused does not have to convince the Court of anything, nor does he have to prove anything. However I did not believe his evidence.

13. The State had not relied on the accused's exculpatory caution at trial and unfortunately Counsel for the accused opened it up during cross-examination. It could be seen from that, that the accused had never before mentioned going to the village to look for a horse. His evidence in chief was the first time that was heard.
14. In not believing the evidence of the accused and with his witness discrediting him, there was nothing in the defence case to make the Court doubt the strength of the prosecution case.
15. The Court agrees with the unanimous opinions of the assessors and finds the accused guilty of both counts as charged.
16. He is convicted on each count accordingly.
17. That is the Judgment of the Court.



P. K. Madigan

Judge

At Labasa

22 August 2018

