

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 57 of 2018

STATE

vs.

- 1. JOELI TAGO SOKOBULI**
- 2. ONISIMO TAUKEISOLO**
- 3. RUSIATE KOTOBALAVU**
- 4. KEMUELI NOKONOKOVOU**

Counsel: Ms. K. Semisi for the State
Mr. F. Vosarogo with Mr. Cakau for all Accused Persons

Date of Hearing: 11th, 12th, 13th and 17th September 2019
Date of Closing Submissions: 18th September 2019
Date of Summing Up: 19th September 2019
Date of Judgment: 20th September 2019

JUDGMENT

1. The first accused is charged with one count of Rape, contrary to Section 207 (1), (2) (a), and (3) of the Crimes Act, the second accused is charged with one count of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act, the third accused is charged with one count of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act and the fourth accused is charged with one count of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act. The particulars of the offences are that:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

JOELI TAGO SOKOBULI on the 4th day of May, 2012 at Mau Village, Navua in the Central Division, had carnal knowledge of **SW**, a child under the age of 13 years.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

ONISIMO TAUKEISOLO on the 4th day of May, 2012 at Mau Village, Navua in the Central Division, had carnal knowledge of **SW**, 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

RUSLATE KOTOBALAVU on the 8th day of May, 2012 at Mau Village, Navua in the Central Division, had carnal knowledge of **SW**, a child under the age of 13 years.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

KEMUELI NOKONOKOVOU on the 9th day of May, 2012 at Mau Village, Navua in the Central Division, had carnal knowledge of **SW**, a child under the age of 13 years.

2. The hearing commenced on the 11th of September 2019 and concluded on the 17th of September 2019. The prosecution presented the evidence of the complainant. The four accused person opted to exercise their right to remain silence, hence, no evidence were adduced for the defence. The learned Counsel for the prosecution and the defence then made their respective closing addresses. I then delivered the summing up.
3. The three assessors in their opinions unanimously found the four accused not guilty of the offences.
4. Having carefully taken into consideration the evidence adduced during the hearing, the closing addresses of the counsel, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the four accused had penetrated into the vagina of the complainant with their penis on four separate occasions. The first and the second accused have allegedly penetrated into the vagina of the complainant with their penis on the 4th of May 2012. The third accused have allegedly penetrated into the vagina of the complainant with his penis on the 8th of May 2012. The alleged incident involved with the fourth accused have occurred on the 9th of May 2012. The complainant claims that she knew all of the four accused prior to these four alleged incidents and properly recognized them when they committed these alleged crimes on her on the 4th, 8th and 9th of May 2012 respectively.
6. The leaned counsel for the defence cross examined the complainant about the lighting conditions at the time of these four incidents took place. The defence suggested to the complainant that she did not properly recognize the four perpetrators due to the poor lighting conditions, which the complainant denied in her evidence.

7. Accordingly, the main issue that the court has to determine in this matter is whether the complainant has properly and clearly recognized the four accused persons as the four perpetrators that have committed these crimes on her on the 4th, 8th and 9th of May 2012 respectively.
8. According to the admitted facts tendered pursuant to Section 135 of the Criminal Procedure Act, the complainant knows all the four accused. Moreover, the complainant in her evidence said that she knew all of them before these incidents, as they all have grown up together in the village.
9. In respect of the first incident involved with the second accused, the complainant specifically said that she saw him when he was calling her by waving his mobile phone at her. The tube light at the veranda of the school building was switched on at that time. The complainant said that she was able to clearly see the second accused when they went inside the washroom as the light from the tube light from the school building came through into the washroom. Moreover, the light of the mobile phone of the second accused also lit the inside of the washroom. The second accused was very close to her when he tried to penetrate into her vagina with his penis. She was lying on the floor while he came on top of her and tried to penetrate into her vagina with his penis. However, the second accused failed to penetrate into her vagina with his penis as she moved away.
10. The complainant said that she saw Tukai Tago, the first accused when he walked into the washroom. The only source of light inside the washroom was the mobile phone of the second accused. However, the complainant said that still the light from the school building came through into the washroom. The first accused was very close to her when he came on top of her and penetrated into her vagina with his penis. She knew the first accused before this incident.
11. I do not give much attention to the two photographs shown to the complainant during her cross examination, as they were not tendered in evidence by the defence. However, the complainant said that the tube light of the veranda of the school building was located much

closer to the washroom in 2012. The defence did not suggest otherwise or challenge the evidence of the complainant in respect of the location of the tube light of the veranda of the school building in 2012.

12. Having taken into consideration the facts that the complainant had known the first and second accused since she was small and grown up with them together in the village and the circumstances under which she made her recognition of the two accused during the two alleged incidents, I am satisfied that the evidence of recognition of the complainant in respect of the first and two accused are reliable and credible. I accordingly accept them as truthful evidence.
13. The complainant met one Juta on her way back home from one of her grandparents' house on the evening of the 8th of May 2012. Juta told her that Sukulu wants to see her and took her to the house of Sukulu. Accordingly, it is clear that the complainant knew that she was going to Sukulu's house. She knew Sukulu before this incident as she grown up with him together in the village. There was a light switched on at the sitting room, though it was not much bright. The kitchen was just three meters from the sitting room and there was no partition between the sitting room and the kitchen. The complainant said that Sukulu was very close to her when he penetrated into her vagina with his penis. Sukulu was on top of her while she was lying down on the floor. Having taken into consideration these evidence, I am satisfied that the evidence of recognition of Sukulu is reliable and credible. I accordingly accept it as truthful evidence.
14. On the 9th of May 2012, the complainant was walking around the village with three of her friends. When she came around Kemu's house, Kemu called her into his house. She knew Kemu before and had met and spoken with him prior to this incident. It is clear that the complainant knew that she was called by Kemu into his house. There was no light switched on inside the house, but Kemu was very close to her when he penetrated into her vagina. With her prior knowledge and acquaintance about Kemu and the close proximity of her observation of the perpetrator who penetrated into her vagina with his penis on the evening

of 9th of May 2012, I am satisfied that the evidence of recognition of fourth accused is reliable and credible. I accordingly accept it as truthful evidence.

15. The complainant explained the reason why she did not make any complaint to anyone else about these incidents immediately. She was scared and felt ashamed of what has happened to her. The complainant was eleven years old at that time. The complainant denied that there was a discussion or a meeting with the village headman, his wife and a police officer about these incidents. I am satisfied with the reasons given by the complainant regarding the delay in reporting this matter.
16. Having taken into consideration the reasons discussed above, I find the evidence given by the complainant is reliable, credible and truthful. Accordingly, I accept the evidence of the complainant.
17. Accordingly, I find the prosecution has successfully proven all for counts against the accused beyond reasonable doubt. Accordingly, I have cogent reasons to disagree with the unanimous opinion of not guilty given by the three assessors.
18. In view of the above reasons, I hold that the prosecution has successfully proven beyond reasonable doubt that the first accused guilty of the first count of Rape as charged, the second accused guilty of the alternative count of Attempt to Commit Rape, the third accused guilty of the third count of Rape as charged and the fourth accused guilty of the fourth count of Rape as charged.
19. In conclusion I make following orders that:
 1. The first accused guilty of the offence of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act.
 2. The Second accused guilty of the alternative offence of Attempt to Commit Rape, contrary to Section 208 of the Crimes Act.

3. The third accused guilty of the offence of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act and convict to the same accordingly.
4. The first accused guilty of the offence of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act.




R.D.R.T. Rajasinghe
Judge

At Suva

20th September 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Vosarogo Lawyers for all Accused Persons.