

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

**Crim. Case No: HAC 350 of 2019**

**STATE**

vs.

**ID**

**Counsel:** Ms. U. Tamanikaiyaroi with Mr. U. Lal for the State  
Ms. J. Korotini for Accused

**Date of Hearing:** 24<sup>th</sup> November 2020 to 25<sup>th</sup> November 2020

**Date of Closing Submission:** 26<sup>th</sup> November 2020

**Date of Summing Up:** 27<sup>th</sup> November 2020

**Date of Judgment:** 01<sup>st</sup> December 2020

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**JUDGMENT**

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1. The name of the Complainant and the Accused are suppressed. Hereinafter the Complainant will be referred to as **TM** and the Accused will be referred to as **ID**.
2. The accused is being charged with one count of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act and one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offences are that:

**Count 1**

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

*Particulars of Offence*

*ID between the 1<sup>st</sup> day of January 2018 - 31<sup>st</sup> August 2018 at Navua, in the Eastern Division, had carnal knowledge of **TM**, a child under the age 13 years.*

**Count 2**

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

*Particulars of Offence*

*ID between the 1<sup>st</sup> day of May 2019 - 31<sup>st</sup> August 2019 at Navua, in the Eastern Division, had carnal knowledge of **TM**, without her consent.*

3. The hearing commenced on the 24th of November 2020 and concluded on the 25th of November 2020. The Prosecution presented the evidence of the Complainant, while the Defence presented the evidence of the accused and one witness. The learned Counsel for the Prosecution and the Defence then made their respective closing addresses. Afterwards, I delivered the summing up.
4. The three assessors in their unanimous opinion found the accused guilty of both counts of Rape.
5. Having carefully considered the evidence presented during the hearing, the respective closing addresses of the parties, the summing up, and the opinion of the assessors, I now proceed to pronounce the judgment as follows.
6. The Prosecution alleges that the accused had penetrated the vagina of the Complainant in the same way on multiple occasions during the period between the 1st of January 2018 and 31st of August 2018. Furthermore, the Prosecution alleges that the accused had again

penetrated the vagina of the Complainant in the same manner on a few occasions during the period between the 1st of May 2019 and 31st of August 2019. Accordingly, the Prosecution is required to prove beyond a reasonable doubt that the accused had penetrated the vagina of the Complainant with his penis at least once during the time, as stated in the count one. Likewise, the Prosecution has to prove beyond a reasonable doubt that the accused had penetrated the vagina of the Complainant with his penis without her consent at least once during the time as stated under count two.

7. The Complainant in her evidence explained about two incidents, where the accused had penetrated her vagina with his penis during the period between the 1st of January 2018 and the 31st of January 2018. She then explained about two more such incidents that had happened between the 1st of May 2019 and the 31st of August 2019. The Defence raised that her evidence is inconsistent with the statement she made to the police in respect of the second incident pertaining to the count one. Having carefully considered the above inconsistency, I do not find that has affected the reliability and credibility of the evidence given by the Complainant.
8. The accused merely denies the allegation, saying such incidents never happened. Miliana, the eldest daughter of the accused, in her evidence, admitted that she would do anything to save her father, even he had done something bad. That was the reasons; she came to Court to give evidence. Her evidence only challenged the evidence of the Complainant in relation to the second incident pertaining to the second count. The Court only needs to satisfy that the accused had committed this offence at least once during the period stipulated in the count.
9. Upon careful consideration of the evidence of the Defence, I do not find them reliable and credible evidence. Neither the evidence of Defence created any doubt about the Prosecution case.

10. I observed the manner the Complainant gave her evidence. She was forthright, coherent and consistent in her evidence. I accordingly find the evidence of the Complainant as credible, reliable and truthful evidence.
11. In view of the reasons discussed above, I find the Prosecution has successfully proved that the accused had committed these two offences beyond a reasonable doubt. Hence, I do not find any compelling reasons to disagree with the unanimous opinion of guilt given by the assessors.
12. In conclusion, I find the accused guilty of these two counts of Rape as charged in the information and convict him for the same accordingly.



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**Hon. Mr. Justice R.D.R.T. Rajasinghe**

**At Suva**

01<sup>st</sup> December 2020

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.