

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 62 OF 2019**

**STATE**

**V**

**MALELI KOROIVALU**

**Counsel** : Ms. K. Semisi for State  
: Mr. I. Romanu for Defence

**Date of Trial** : 10, 11, 12 August 2020

**Date of Summing Up** : 13 August 2020

**Date of Judgment** : 14 August 2020

**(Name of the Complainant is suppressed)**

**JUDGMENT**

1. The accused was charged with one count of Rape and two counts of Sexual Assault. The information reads as follows:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

MALELI KOROIVALU on the 9<sup>th</sup> day of February 2019 at Laucala Beach Estate in the Central Division had carnal knowledge of MB without her consent.

**COUNT 2**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

MALELI KOROIVALU on the 9<sup>th</sup> day of February 2019 at Laucala Beach Estate in the Central Division unlawfully and indecently assaulted MB by pressing her breasts.

**COUNT 3**

*Statement of offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

MALELI KOROIVALU on the 9<sup>th</sup> day of February 2019 at Laucala Beach Estate in the Central Division unlawfully and indecently assaulted MB by licking her vagina.

2. At the end of the Prosecution's case, the accused was acquitted of count 3 as there was no evidence on that count to put the accused to his defence. The trial proceeded to the end for counts 1 and 2.
3. After my Summing-Up, the assessors were unanimous in their opinion that the accused is guilty on counts 1 and 2. I review the evidence on my own Summing-Up and pronounce my judgment as follows.

4. The Prosecution called two witnesses, the complainant and Doctor Singh who had examined the complainant after the alleged incident. The Defence called the accused and complainant's sister Alanieta.
5. The accused denies all the allegations. The Defence's case is that the complainant is not telling the truth.
6. It is not disputed that the complainant was 15 years of age at the time of the alleged incident. She is now 17 years old. My observation of the complainant's appearance is that she is timid, shy and quiet. Her quietness had also been observed by doctor Singh. When she was asked to describe what had happened after the zip of her trousers was lowered, she amply demonstrated her shyness and the difficulty in talking about matters of sexual nature. I had to adjourn the Court several times and she took nearly two days to complete her evidence.
7. The complainant is from a broken family. Her parents are separated. Her mother resides in Nausori with another man (step-dad) and her father in Australia. She has 9 siblings and she is the youngest. She was brought up by her aunt in Tovata. From there, she goes to Newtown and stays with a friend for 2 days and then moves to another friend in Laucala. When she was staying there, on 9 February 2019, she accidentally meets with her sister Alanieta. It was a happy reunion of sisters after a long time. She finally decides to stay with her sister.
8. By this day, Alanieta had just made arrangements to rent a room, close to her work place, from a five bedroomed house in Laucala Beach. It was owned by the accused. It was a Saturday and Alanieta was still at her workplace, Chands Clothing.
9. Alanieta was busy with her work and she sends her sister alone to the accused's house until she completes her morning shift. The accused welcomes the complainant and allows her to occupy the room earmarked for her sister. The alleged incident occurred in this house at around 7 pm. on the same day when Alanieta had gone for her night shift.
10. Despite her apparent uneasiness to talk about sexual matters, the complainant finally opened up and managed to tell her story. She maintained her position that the accused pressed her naked breasts and penetrated her vagina with his penis.

11. In the accused's house, one room was occupied by a lady, another tenant, whom the accused described as Salome. There is no dispute that, at the time of the alleged incident, only person present in the house apart from the accused and the complainant was Salome.
12. The complainant admits that she did not relay the alleged incident either to Salome or her (complainant's) sister at the first available opportunity.
13. The Defence Counsel is advancing the argument that relies for its probative value on a social assumptions about sexual violence, the assumption that women who were actually raped will tell someone immediately and, correlatively, that women who do not report an attack promptly are lying.
14. The complainant is a child and I have already described her disposition. When confronted with questions posed by the Defence Counsel as to why she did not relay the incident to Salome or her sister at the first available opportunity, the complainant advanced her explanations. She said that she was scared of the accused. She also used the Fijian word 'weleca' which was interpreted by the interpreter to mean 'forgot'. However, the interpreter herself was not sure about the correctness of her translation. The Defence Counsel agrees that the word 'weleca' does not connote 'forgot'.
15. On the following day, Sunday the 10 February 2019, the complainant attends church with her sister. There again she does not tell her sister or mother about the alleged incident. Her explanation is that she was scared of her step-dad who had accompanied her mother to the same church.
16. There is no dispute that the alleged rape incident was communicated to Alanieta by the complainant on Monday the 11 February 2019, a day after the incident. This was confirmed by Alanieta when she was called by the Defence. In view of this delay, the Defence argues that the complainant is lying.
17. It is apposite at this stage to state something about the circumstances under which the matter was eventually relayed to her sister by the complainant. On her way back to Laucala from Cunningham with her sister-Alanieta, the complainant informs Alanieta that her private part

is painful. She further informs that her thighs are painful and she has a headache. Alanieta asks her if she is having her menstruation. The complainant replies in the negative. When they reached Max Value Supermarket, the complainant informs her sister that she does not want to go back home. Alanieta asks her the reasons why she does not want to go home. She then informs that the accused fondled her, touched her breasts, and he inserted his penis into her private part. This was confirmed by the Defence witness Alanieta in her evidence.

18. Denying the proposition by the Defence Counsel that she did not return to the accused's house because she had not paid the rent, Alanieta confirmed that the only reason why she did not return was the allegation against the landlord.
19. Generally, a previous consistent statement of a witness is not allowed to be used to support his or her evidence. There is an exception to this rule in sexual cases, where a previous statement is allowed to be used to prove the consistency of the conduct of the complainant. In this case, the Prosecution does not rely on this exception (to the hearsay rule) whereas the Defence is using the complainant's previous statement for a different purpose, namely to discredit the version in court of the complainant.
20. The Prosecution did not call Alanieta or it relied on recent complaint evidence for the obvious reason that Alanieta's witness statement had some inconsistencies with that of the complainant as to what the complainant had told her. In view of these inconsistencies, the Defence grabbed the opportunity and called Alanieta in order to discredit the version of the complainant. However, in her evidence, Alanieta confirmed that she received a complaint from the complainant that she was raped; she had a difficulty in walking, she had sore thighs and that she was refusing to go back home. There is no inconsistency whatsoever on the crucial points touching the sexual matters in issue although there were inconsistencies as to the date, the exact place the incident took place and on some other peripheral matters such as that relating to the existence of a door to the room etc.
21. The significance of the so called inconsistency as to the existence of a door to the room is negated as the accused himself admitted that there are doors to the rooms of his house. Alanieta had been there only for a couple of nights and it is preferable on this issue to believe the accused who is better positioned to describe about the doors of his house. Furthermore, it is highly improbable that the girls opted to rent a room which did not have a door.

22. The complainant does not deny that she had told her sister that the accused had forced her when she came back from the bathroom and was dragged to his room on Sunday evening. In her evidence, she did not tell anything about her being dragged to the accused's room on Sunday. The Defence Counsel submits that it is a contradiction *vis-a-vis* her previous statement made to her sister.
23. In her evidence, the child complainant did not testify to an incident happened on Sunday. It may be for the reason that her evidence was led (by the State Counsel) on the basis of complainant's own witness statement. She was a reluctant witness and, unless guided by a leading question, it is unlikely that she would tell something which she is not asked about. Therefore, I would rather treat this as an inconsistency that has not reached the threshold of a material contradiction sufficient enough to discredit the version of the complainant.
24. The complainant admits that the accused offered food after the alleged incident and she ate it with Salome. She also admits that, on 11 February 2019, she was sitting in the sitting room where the accused was also sitting when her sister arrived home after work. The Defence Counsel argues that her conduct is not consistent with her evidence that she was scared of the accused.
25. The complainant did not answer the question why she ate the food the accused offered if she was really scared of him. She did not tell the court in so many words why she was sitting in the sitting room where the accused was also sitting. However, she did tell the court that she was scared of the accused; how the accused used force on her and how her mouth was shut. She had told her sister how she was threatened with death. It is possible that she obeyed the accused and had the meal he offered out of fear. Furthermore, Alanieta confirmed that the complainant was not sitting with the accused and that Salome was also present in the sitting room.
26. Even though there had been a slight delay in reporting, and her conduct may not be consistent with that of a typical adult rape victim, it is my considered view that there are reasonable explanations in the circumstances of this case for her conduct.

27. The doctor's expert evidence that the vagina of the complainant had been penetrated was not challenged. Although the doctor did not exclude the possibility of a digital or an object penetration, the fact remains that she was penetrated. It was never put to the complainant that she had engaged in any other activity, sexual or otherwise, that could have damaged her hymen. The absence of a discharge in the complainant's vagina after two days of the alleged incident does not suggest that she was never raped. Furthermore, it was not put to the complainant if the accused had ejaculated inside her vagina. Although the doctor found no other notable injuries on complainant's body, in view of his opinion that slight injuries are likely to heal within 24-48 hours, the medical findings does not preclude the possibility of a forceful sexual intercourse. The doctor's findings on 12 February 2019 is consistent with complainant's evidence that she was raped on 9 February 2019.
28. There is no apparent reason why this child witness should fabricate these allegations against the accused who is a stranger to her.
29. I accept the version of the Prosecution and reject that of the Defence. The Prosecution proved counts 1 and 2 beyond a reasonable doubt.
30. I agree with the unanimous opinion of the assessors.
31. The accused is found guilty on counts 1 and 2 as charged and convicted accordingly. The accused is acquitted on count 3.
32. That, is the judgment of this Court.



**Aruna Aluthge**

**Judge**

**At Suva**

**14 August 2020**

**Solicitors: Director of Public Prosecution for State  
MIQ Lawyers for Defence**