

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Crim. Case No: HAC 19 of 2021

THE STATE

vs.

LIVAI PENISENI

Counsel : Ms. L. Latu for State
Ms. T. Tuiloma with Mr. P. Gade for Defence

Dates of Hearing : 28, 29 June 2022

Date of Judgment : 30 June 2022

(Name of the Complainant is suppressed. She is referred to as IM)

JUDGMENT

1. The accused was charged with eleven counts of Rape under the following information:

COUNT ONE
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2014 to the 31st of December 2014, at Soasoa, Labasa, in the Northern Division, had carnal knowledge of IM, a child under the age of 13 years.

COUNT TWO
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2014 to the 31st of December 2014, at Soasoa, Labasa, in the Northern Division, penetrated the vagina of IM, a child under the age of 13 years, with his finger.

COUNT THREE
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2015 to the 31st of December 2015, at Soasoa, Labasa, in the Northern Division, had carnal knowledge of IM, a child under the age of 13 years.

COUNT FOUR
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2015 to the 31st of December 2015, at Soasoa, Labasa, in the Northern Division, penetrated the vagina of IM, a child under the age of 13 years, with his finger.

COUNT FIVE
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2016 to the 31st of December 2016, at Soaso, Labasa, in the Northern Division, penetrated the vagina of IM, a child under the age of 13 years, with his fingers.

COUNT SIX
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2017 to the 31st of December 2017, at Soaso, Labasa, in the Northern Division, had carnal knowledge of IM, a child under the age of 13 years.

COUNT SEVEN
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2017 to the 31st of December 2017, at Soaso, Labasa, in the Northern Division, penetrated the vagina of IM, a child under the age of 13 years, with his finger.

COUNT EIGHT
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2018 to the 31st of December 2018, at Soaso, Labasa, in the Northern Division, had carnal knowledge of IM, a child under the age of 13 years.

COUNT NINE
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2018 to the 31st of December 2018, at Soasoa, Labasa, in the Northern Division, penetrated the vagina of IM, a child under the age of 13 years, with his finger.

COUNT TEN
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2019 to the 31st of December 2019, at Soasoa, Labasa, in the Northern Division, had carnal knowledge of IM, a child under the age of 13 years.

COUNT ELEVEN
(Representative Count)

Statement of Offence

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

Particular of Offence

LIVAI PENISENI between the 1st of January 2019 to the 31st of December 2019, at Soasoa, Labasa, in the Northern Division, penetrated the vagina of IM, a child under the age of 13 years, with his finger.

2. The accused pleaded not guilty to all the charges. At the trial, the Prosecution presented the evidence of the complainant, her mother, her sister and the doctor who examined the complainant. At the end of the Prosecution case, the accused was put to his defence. Only the accused gave evidence for Defence. At the end of the Defence case, the Court heard oral

submissions from both Counsel. Having carefully considered the evidence presented at the trial, I now proceed to pronounce my judgment as follows.

3. Prosecution bears the burden to prove all the elements of the offence and that proof must be beyond reasonable doubt. That burden never shifts to the accused at any stage of the trial. The presumption of innocence in favour of the accused shall prevail until the charge is proved beyond reasonable doubt.

4. According to the Information, the accused is charged on Counts 1, 3, 6, 8, 10 with having had carnal knowledge of IM, a child under the age of 13 years. The Complainant was under the age of 13 during the period alleged in the information. There is no dispute about her age that she was under 13 years. Thus she did not possess the necessary mental capacity to consent to any form of sexual activity. Accordingly, the Prosecution is not burdened to prove the third and fourth elements of the offence of Rape. On Counts 1, 3, 6, 8 and 10, the Prosecution must prove the following elements.
 - (a). The Accused, LIVAI PENISENI
 - (b). Penetrated of the vagina of the Complainant, IM with his penis.

5. According to the Information, the accused is charged on Counts 2, 4, 5, 7, 9 and 11 with digital rape. On those counts the Prosecution must prove following elements.
 - (a). The Accused, LIVAI PENISENI
 - (b). Penetrated of the vagina of the Complainant IM with his finger.

6. A slightest penetration is sufficient to prove the element of penetration.

Case for Prosecution

The Complainant (IM)

7. According to the birth certificate tendered in her evidence, IM was born on 9 September 2007. She testified that she is attending Ra High School and currently in Form 3. Up until Class 6 she was attending Vunika Primary School in Labasa. She was residing during those days in Soaso in a four bed room house with her stepfather Livai Peniseni, mother Loraine Louey and her two sisters, Elizabeth and the Adi Tavu whose biological father is Peniseni.

8. In 2014, she was in Class 1. She used to stay with her stepfather and two sisters at home in Soasoa when her mother went to the market to sell fish parcels at night. Her stepfather used to go out and come back drunk. Mostly on Fridays, she used to sleep on the floor with her younger sister Adi Tavu in the living room and the stepfather would come and sleep in the living room with them. Her elder sister Elizabeth used to sleep in the bedroom.
9. When she was asleep, her stepfather would pull down her underwear and start touching her vagina. He would then insert his fingers inside her vagina. He would also insert his penis inside her vagina. When he does that, she would try to push him off. When she pushes him off he goes back to sleep. When he was doing all these, she was scared and feeling uncomfortable. No one was awake when he was doing this.
10. She said her stepfather inserted his penis and fingers into your vagina several times in the year 2014. She did not mention this to anybody because she was really scared. He told her that if she told anybody, he would do something to her. He specifically said 'don't tell Tavo, her younger sister, and that he would give her money. These incidents occurred at night and she could confirm that her stepfather Livai was doing these things because the light (bulb) in the kitchen was always on and it lighted up the living room. Sometimes he used to do these things in the living room and sometimes in the bedroom.
11. Sometimes her stepfather used to cover her mouth and warn her not to say anything. She did not want him to do these things to her. It's humiliating and embarrassing so she did not want to tell anybody.
12. Then she explained what had happened to her in 2015. In 2015 too, he would insert his fingers into her vagina several times. He also would insert his penis into her vagina several times. She elaborated that several times mean more than once. These things happened in the living room at night in Soasoa, Labasa, when her younger sister was sleeping and when her mother had gone to sell fish parcel. He did the same thing covering her mouth and tell Tavo or anyone. He would go and check if her elder sister Elizabeth's really sleeping. After checking he would come and get on top of her and he would be inserting his fingers and inserting his penis into her vagina.

13. She did not tell mother or anybody because she was scared. He would tell me not to tell anybody or not to tell Tavo. He also gives her money. She thought that these things are not supposed to be said. Sometimes her mother would say are you in love with him or do you want to get married to him. Sometimes she would go out and cry. She were never mistaken about the incidents in 2015 that it was her stepfather doing these things to her.
14. In 2016 she was in Class 3 and were still staying in Soasoa, Labasa. Sometimes he would tell her to take out his white hair from his head and give her money. In that year too her stepfather inserted his fingers into her vagina several times when no one was present at night in the living room. He used to cover my mouth. She would kick and try to push him off. He would go back to sleep. He would stand up again and try to do the same thing.
15. Sometimes her stepfather used to kick her mother out. She could confirm that it's her stepfather doing these things because the light in the kitchen was lighting the living room. She could see his face. Sometimes when she was at home or at school she used to experience pain in her vagina.
16. She did not agree for him to do those things to her. She didn't even know what he would do to her. After he did those things to her in 2016. He said not to tell Tavo. She did not tell her mother because she was cared.
17. In 2017 she was in class 4 still residing in Soasoa, Labasa. In that year he would do the same thing in the living room, he was inserting his fingers inside her vagina and also inserting his penis inside her vagina during night. He did those acts more than once. She could see his face as the light from the kitchen was shining the living room. She was not mistaken because her stepfather was the only man at home.
18. In 2017 he inserted his penis into her vagina several times but not much because lot of times she used to stay with her aunt at auntie's place. She was scared and did not tell her mother what her stepfather did to her.
19. In 2018 she was in Class 5. Her stepfather did the same thing in 2018. He would insert his fingers into her vagina and his penis into her vagina several times in the living room during night when no one was present. She could recognise his face by the light from the kitchen.

20. In 2019, she was in class 6, she was still staying in Soasoa in the same house, with her mother, two sisters and stepfather. In 2019 too, he would insert his fingers and his penis into her vagina several times in the living room but not much because she had gone for athletic zone meeting. When she was trying to push him off he would go back to sleep. No one else was present in the living room, Elizabeth was sleeping inside the bedroom. Mum had gone out for selling parcels. She did not tell her mother when she returns back because she was scared. She started to feel more pain in her vagina. Sometimes it affected her school work.
21. Police came to know about these incidents from her sister Elizabeth. Elizabeth came to know the incident in the year 2011 when her stepfather was doing these things to her. He was caught in the act of doing that thing to her during the day time. When the matter was reported to police she was taken for a medical examination at Labasa Hospital in 2020.
22. Under cross examination, IM confirmed in the four bedroom house her stepfather's bedroom is the only one with a door and the door has two locking mechanisms from the inside, one nail and one latch bolt lock.
23. She admitted that in 2019 her sister Elizabeth also told the Police that she had sex with her stepfather. She admitted that when her sister reported her case to the Police, she did not tell her mother about these allegations. She said that she told her mother about these allegations when she found out that her sister was pregnant.
24. She admitted that her mother wasn't too happy and was angry with the 23 months' imprisonment her stepfather received in November 2019. She admitted that her mother and her sister first went to the Police Station to report the sister's matter in early February of 2020. She admitted that her mother took her to the Police Station to record her statement more than two weeks after she had reported the matter to the Police.
25. She then said she never went to the Police Station with her mother in February 2020 to record her statement but she went to the Women's Crisis Centre. She admitted that she reported those allegations because her mother was dissatisfied with the sentence her stepfather received in 2019. She denied that she made up these allegations because her mother wanted her stepfather to serve a longer sentence for what had happened to Elizabeth.

26. She denied the propositions by the Defence Counsel that her stepfather had never engaged in any of the sexual activities he is alleged to have committed in the case.

Doctor Susau

27. Dr Susau was attached to the Labasa Hospital in 2020. She recalled medically examining IM at Labasa hospital. She filled up the Fiji Police medical form dated 8 February 2020 which she tendered in her evidence marked as PE1.
28. Referring to D11, the doctor described the initial impression of the patient. The patient seemed traumatized and embarrassed of telling the story but was trying to be as honest as possible. Describing the specific findings at D12, doctor said that she did not find any bruises or any scars or any marks on her body. Upon the vaginal examination she found the patients external perineum of genitalia -clitoris, labia major and minor to be normal. There was no obvious bleeding, fissures, swelling noted. The vaginal introitus had hymenal ring remnants only. The hymen itself did not appear to be intact. There was no discharge.
29. She further explained that hymen tissue is usually disrupted if there is any direct penetration during sexual activity or using hard objects or if someone has very hard core exercise, horse riding. She cannot actually say that her patient lost her virginity because there is a lot of other mechanisms that can have this particular tissue being disrupted, but what she did see was that only the remnants, meaning the hymen was not intact or it has been disturbed. There was no fresh injuries. There was no evidence of recent trauma. She could not comment on whether or not penetration had occurred.
30. Given patient's age, it was not normal for her to have such finding because usually she could often see that the hymen at this particular age is usually intact.

Louraine Louey

31. Louraine testified that she was staying in Soasoa Labasa before leaving for Naila. She got married to Livai Peniseni in 2013. She was staying with Livai and her 3 daughters, Elizabeth

Ann, IM and the daughter from Livai, Adi Tavo. She tendered the birth certificate of IM to show that IM was born on 9 September 2007.

32. She explained how IM's case was reported to police in 2020. In 2020, she accompanied Elizabeth to Women Crisis Centre and when they reached home Elizabeth told her the whole story. She was shocked.
33. Elizabeth told everything about what Livai always did to IM. She said she did not believe what she heard and she said to Elizabeth, don't tell bullshit; don't lie because she trusted Livai so much. After the following week when Elizabeth went to Women Crisis Centre, the matter was taken to Namara Police Station.
34. IM told her that the father used to touch her vagina, he used to touch her breast and he always inserts his penis into her vagina. When she heard this, she was shocked. She felt sorry for her daughter. When IM was telling these things, she was crying. Louraine said that she hated Livai because she did not know he was capable of doing that. She said that she used to sell in the market, at day time and sometimes in the night time.
35. Under cross examination, Louraine admitted that Elizabeth was pregnant in mid-2019, and her matter was reported to police in mid-2019 and that Livai was charged with defilement and sentenced to 23 months in prison in November 2019.
36. She admitted that the day the sentence was delivered she was present in court and that she was upset with the sentence because it was lenient and started swearing at Livai.
37. She admitted that IM's matter was reported to police in February 2020. She also admitted that when Elizabeth's matter was reported to police in 2019, IM never told her about the allegations she's making against Livai.
38. She admitted that in the statement she made to police in February 2020, she complained about what had happen to Elizabeth only. An officer came from Suva told her to lodge a complaint regarding IM's issue. She admitted having stated to police that she was angry that she wanted to kill her husband for what he did.

39. She denied that she reported this case against Livai because she was not happy with the sentence that her husband had received in 2019. She denied that these allegations were made up because she wanted her husband to serve a harsher sentence.
40. She admitted that sentence was appealed and 4 years' imprisonment was substituted by the High Court. She admitted visiting Livai at Naboro Maximum Prison in December 2020 after the sentence was enhanced. She denied having told Livai that she would be withdrawing this matter.

Elizabeth Ann Louey

41. Elizabeth and her family were staying at Soasoa, from 2010 to 2019. In 2011 when she was in Class 2 she was sleeping in the room and she woke up. It was strange that the house was silent. She looked around and checked all the rooms. One of the rooms was locked. When she pushed the door it got stuck and then she peeped through the hole where the door knob was, she saw Livai on top of her sister. She saw Livai inserting his penis inside her sister IM's vagina. She witnessed this incident during day time at around 12 noon.
42. She wanted to scream. She saw Livai telling her sister to keep quiet. She went back to the living room to watch TV. Her mother had gone to town with Tavo. IM was only 4 years old during that time
43. She did not disclose this incident to anybody because she was afraid. She could not inform her mother because she was afraid and also she was not close to her mother and also she thought that her mother won't believe her.
44. In 2017, she was in Class 8. She confronted her stepfather to stop what he was doing because, by looking at sister's behavior, she suspected that he was continuously doing it.
45. Elizabeth under cross-examination denied making up her eye witness account. She admitted that in mid-2019, she told the police that her stepfather had sex with her. She admitted that she did not tell the police what she had witnessed in 2011 with regard to her sister IM.

46. She admitted that, in 2019, when she was telling her mother about what had happened to her, she never mentioned what she had witnessed stepfather doing to IM. In 2019 when her stepfather was arrested she never told her mother of what she had witnessed because she did not want to add up to her mother's worry. IM is mother's favourite and she thought that her mother won't believe her. She admitted that it was only in February of 2020 that she came forward and told the police what had happened with IM. She told the police what she had witnessed after her stepfather was sentenced in the defilement case. Her mother reported her sister's matter to police in February 2020.
47. She denied that she made up these allegations because her mother wanted her stepfather to pay for what he did to her because she was dissatisfied with the sentence that her stepfather received in 2019.

Case for Defence

Livai Peniseni

48. Livai, in 2011, was residing in Soasoa Settlement with Loraine Louey and Elizabeth Ann Louey and IM and Adi Tavo. He legally married Loraine in 2013. They were moving from place to place from 2011 to 2019 and occupied 3 houses. He was not certain as to how many bedrooms each house has had.
49. The house they were occupying in 2011 had 3 bedrooms. He denied coming on top of IM and having sex with her in a locked room. He was sure, there was no door knob in the only door and it had only the tower bolt. In 2014 they were occupying a house with 4 bedrooms. He denied all the allegations that he had had sex with IM from 2014 to 2019. In 2019 he was charged with defilement and was sentenced for 23 months' imprisonment. His wife, Loraine was very frustrated at the sentence and she was angry with him. When asked by the Defence Counsel as to the reason why she would have come up with these allegations, Peniseni said 'I never thought that she will hate me so much for what I did to Elizabeth in the defilement case'.
50. In August 2020 he was transferred to Naboro Maximum Prison. On December 24, 2000, his wife came and visited him in Naboro Maximum Prison. She came to ask for money and he told her to go to the Water Authority to collect his welfare money. She told that she can

dismiss the case, and he told her that she cannot withdraw the case because it has gone to the court.

51. Under cross examination he admitted that Office of the Director of Public Prosecutions appealed his sentence to the Court of Appeal in 2020 and his sentence was increased to 4 years' imprisonment term with a 3 years non-parole. He admitted that his wife sometimes goes in the night to sell parcel close to the nightclubs in town. He denied all the allegations from 2014- 2019 he is charged with.

Analysis

52. The case of the Defence was one of complete denial. Defence case theory, as it could be gathered from the line of cross-examination and the closing submission, was that the allegations were made up to take the revenge from the accused for making complainant's elder sister Elizabeth pregnant for which the accused had received a lenient sentence in the defilement case.
53. It was not disputed that the accused was convicted of defilement in 2019 and sentenced to 23 months' imprisonment by the Magistrates Court at Labasa for having defiled Elizabeth. It was also not disputed that the complainant's mother Louraine was highly dissatisfied with the defilement sentence and she threatened to appeal the sentence because it was 'too lenient'. It was also not disputed that the sentence appeal was successful and as a result of which the sentence was enhanced by the High Court to 4 years' imprisonment. It was also not disputed that, when the accused was transferred to Naboro Maximum Prison after the enhanced sentence, Louraine visited the accused and asked for money. Louraine admitted that, in her statement to police, she had told that she wanted to kill her husband when she became aware of what he did.
54. According to the complainant's evidence, her stepfather had started to sexually abuse her from 2014 and, up until 2019, she had been vaginally penetrated by the accused not once but several times, each year, either digitally or with his penis. She said she experienced pain in her vagina and her school work was affected. However, she had never complained to her mother or elder sister or anyone until 2019. Her explanation was that she was scared.

55. It is not disputed that her sister Elizabeth's pregnancy came to light in 2019 and the accused was arrested and sent to jail in the same year. If the complainant was scared of the accused, she had no reason to be frightened anymore because the accused was in police custody. Quite surprisingly, she did not report the matter either to her sister Elizabeth, her mother or to police although her sister Elizabeth had reported her matter in 2019.
56. Louraine confirmed that when Elizabeth's matter was reported to police in 2019, the complainant never told her about the allegations she's making against Livai. Complainant did not report the matter when the accused was arrested in 2019, not when the accused was detained by police in 2019 and not when the accused was remanded in 2019, even though she was in the safe company of her sister and her mother. The report was lodged only in February 2020. I am not convinced by the complainant's explanation that she was scared to report the matter at least to her mother or sister even after the accused was remanded.
57. I observed the complainant's manner of giving evidence and her demeanour. I find her to be too consistent. She repeated like a parrot the same story for each year and came up with answers as if she was coached by somebody.
58. Elizabeth's evidence is materially inconsistent with that of the complainant. According to the testimony of Elizabeth, she had witnessed the accused in a locked room on top of the complainant in the act of having sexual intercourse with her in 2011. However, according to the complainant, the accused had started abusing her only from 2014 and all the incidents since then till 2019 had occurred during night time. The complainant had never complained to anyone about an incident occurred in 2011 and never testified to such an incident in Court. There is no count in the indictment alleging that the accused had raped the complainant in the year 2011. Furthermore, complainant never complained of any incident occurred during daytime whereas the alleged 2011 incident had occurred in broad daylight.
59. Elizabeth has never relayed her 2011 eye witness account to her mother or to the police when she lodged the report about her own incident in 2019. She did not tell her mother or police about such an incident even after her stepfather was arrested and remanded. She relayed this incident to police only in February 2020 when her stepfather went to jail for 23 months, the sentence her mother was angry about its leniency. She gave number of explanations for her conduct of delayed reporting. She said she was afraid. She further said that she was not close

to her mother and thought that she wouldn't be believed by her mother. She also said that she did not want to add to her mother's worries.

60. It is highly implausible that Elizabeth kept such an eye witness account of a crime committed on her own sister who was only 4 years old at that time secret even after her stepfather was arrested and remanded in 2019. She had confronted her stepfather in 2017 because she felt that the abuse was still ongoing and she could not tolerate her sister being abused in that manner. Still she never complained to her mother or anyone. It is also surprising that Elizabeth never questioned about the incident she had just witnessed when her sister came out of the room.
61. Louraine admitted that complainant's matter was reported to police in February 2020. However, the complainant in her evidence stated that she had reported it in 2019 when her sister was found to be pregnant.
62. It is my considered opinion that the inconsistencies in the Prosecution case are such that they raise a reasonable doubt in the version of events of the Prosecution case.
63. Finally, I turn to the medical evidence. It has to be accepted that doctor's evidence does not corroborate the complainant's version so as to implicate the accused. I proceed to consider the medical evidence only to see if it is consistent with the version of the Prosecution. Doctor Susau describing her specific medical findings said that she did not find any bruises or any scars or any marks on complainant's body. Upon the vaginal examination she found the patients external perineum of genitalia - clitoris, labia major and minor to be normal. There was no obvious bleeding, fissures, swelling noted. There was no discharge. Only remarkable observation was that patient's hymen was disturbed, leaving ring remnants only.
64. She explained that hymen tissue is usually disrupted if there is any direct penetration during sexual activity or using hard objects or if someone has very hard core exercise or horse riding. She cannot actually say how the complainant lost her virginity because there is a lot of other mechanisms that can result this particular tissue being disrupted. There was no fresh injuries. There was no evidence of recent trauma. She could not comment on whether or not penetration had ever occurred.

65. Although the doctor took the view that, given patient's age, it was not normal for her to have such finding because she usually expected to see the hymen intact, her evidence is not conclusive evidence as to sexual penetration either digital or with a penis. There is evidence that the complainant had attended athletic zone meetings and it is possible that complainant's hymen got disrupted during physical exercises. It is common knowledge that some women are even born without a hymen, and it is possible that the complainant is such a rare case.
66. In a context of complainant's evidence that she was penetrated digitally and with the penis of the accused for over a period of five years continuously and at times she had experienced pain in her vagina, the observation of the doctor that there was no obvious bleeding, fissures, swelling or discharge would not have been possible even though there had been a delay in the examination from the assumed date of the last penetration (31 December 2019). In my opinion, the medical evidence is not conclusive as to a recent sexual penetration.
67. When considered the totality of evidence, a reasonable doubt is created in my mind as to the guilt of the accused. This doubt is exacerbated by the accused's evidence of Louraine's anger towards him and Louraine's own admission that she was so angry that she wanted to kill the accused. A reasonable doubt in the Prosecution case has been created by the version of the defence that these allegations were made up in view of the dissatisfaction at the lenient sentence in the defilement case. The benefit of that doubt must be given to the accused.
68. The Prosecution failed to prove their case beyond a reasonable doubt. I find the accused not guilty on each count and the accused is acquitted accordingly.



Aruna Aluthge
Judge

30 June 2022

At Labasa

Counsel:

- Office of the Director of Public Prosecution for State

- Legal Aid Commission for Defence

