

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 216 of 2023

The State -v- Veleki Bulicokocoko

For the State: Ms. P. Kumar
For the Accused: Ms. B. Kinivuwai

Date of Trial: 18th March 2024
Date of Judgment: 16th May 2024

JUDGMENT

1. The Accused Veleki Bulicokocoko is charged on the following Information: -

AMENDED INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS

COUNT 1
[Representative Count]

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, unlawfully and indecently assaulted **MAKALESITINANIBOLACIRI TABUAKOVEI**, by kissing her mouth and touching her body

COUNT 2
[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, penetrated the vagina of **MAKALESITINANIBOLACIRI TABUAKOVEI**, a child under the age of 13 years with his tongue.

COUNT 3
[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, penetrated the anus of **MAKALESİ TINANIBOLACIRI TABUAKOVEI**, a child under the age of 13 years with his tongue.

COUNT 4
[Representative Count]

Statement of Offence

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

Particulars of Offence

VELEKI BULICOKOCOKO on unknown dates between the 1st day of December 2022 and 31st day of December 2022 at Navua in the Central Division, penetrated the vagina of **MAKALESİ TINANIBOLACIRI TABUAKOVEI**, a child under the age of 13 years with his finger

2. The Accused was first produced in the Navua Magistrate's Court on the 18th of May 2023 and the case was then transferred to the High on the 5th of July 2023.
3. He was arraigned in the High Court on the 14th of July 2023
4. The Accused pleaded Not Guilty to the Information on the 22nd of August 2023.
5. The matter was adjourned for pretrial conference and the parties also filed the following Admitted Facts pursuant to section 135 of the Criminal Procedure Act 2009: -

Admitted Facts

- (a) The name of the person charged is Veleki Bulicokocoko referred to [“Veleki”], 58 years of age [DOB 9/8/65] and resides at Sauniveiuto, Deuba, Navua.
 - (b) The complainant is Makalesi Tinanibolaciri Tabuakovei referred to as [“Makalesi”], 11 years of age [15/11/2011] and resides at Narara settlement, Deuba, Navua.
 - (c) Veleki and Makalesi are known to each other as they are neighbours and were residing in the same settlement.
 - (d) Veleki was interviewed under caution on 16th May 2023 by D/Sgt. 2693 Waisele Tomu.
 - (e) Veleki was formally charged on 17th May 2023, by WPC 4212 Seruwaia.
 - (f) The following document is not disputed and hereby tendered by consent as Prosecution Exhibit – Birth Certificate of Makalesi Tinanibolaciri Tabuakovei
6. The parties also filed the Pretrial Checklist, and the matter was fixed for Trial on the 18th of March 2024.
7. The parties have filed Agreed Facts pursuant to section 135 of the Criminal Procedure Act 2009. The relevant section provides as follows: -

“Admission of facts

135.-(1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and–

(a) by the prosecutor; and

(b) by the judge or magistrate.

(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial”

8. The matter was fixed for Trial for the 18th of March 2024.

9. On the date of the Trial, the State filed an Amended Information and the same was then read out to the Accused who maintained his Not Guilty Plea to the 3 counts in the Information.

The evidence for the State

10. The State called the complainant and the investigating officer as witnesses. The birth certificate of the complainant was also tendered as an exhibit.

PW1 – Makalesi Tinanibolaciri Tabuakovei

11. The complainant Makalesi Tinanibola Tabuakovei testified that she currently lives in Muanaira, Kiuva, Bau Tailevu.

12. She is currently a student at Fiji School of the Blind and is currently in Class 7. Her favourite subject is English, and she is currently 12 years of age.

13. She testified that in December 2022 she was living in Deuba village with her aunt, two brothers and her grandmother. She started living in Deuba from when she was born and her grandmother's name is Tokasa Tabuakovei and her aunt's name is Eleni Tabuakovei. In 2022 she was in Class 5.

14. She confirmed that in Deuba she lived next to an uncle called Semesa Veleki Bulicokocoko. She normally called him Buli or Vava Levu or Tata Levu. His house is quite a distance walking from her home in the village.

15. Her grandmother would sometimes send her to Veleki's house to bring him some food. It was during these times that he would do "bad things" to her.

16. According to Makalesi, Veleki would kiss her mouth and touch her body.

17. She recalled that he did this in December. He kissed her mouth, and he used his tongue as she was in his sitting room.

18. He touched her breast and her private part. She was given a Female Body diagram and she pointed at the places that Veleki touched indicating her breasts and her genital area. This all happened during the day inside Veleki's house.
19. After kissing her and touching her body Veleki licked her vagina and he sometimes did this in the house and on other times he would do it on top of the seat or chair in the kitchen.
20. He would take off her clothes and licked her vagina and he also licked her anus or her "bum." When he did this, he would sometimes take a long time and on other times it would be a short time only. He used his tongue to lick her vagina and her anus. This would happen in the daytime as this was when she would bring him food.
21. She testified that he licked her vagina about 5 or 6 times and he licked her anus 6 times. This happened inside his house, in the sitting room and kitchen. She was also shown a female diagram and she indicated the anus on the diagram.
22. Apart from licking her vagina, Veleki also poked her vagina. He did this in the same year, and when he did it they were together in his sitting room. He had removed her underwear although she was still wearing her other clothes. She stood facing him and he was sitting down. He used his right index finger to poke her vagina and he did this for a short time.
23. When he poked her vagina, she felt pain. Buli told her not to tell anyone and she did not tell anyone because she was afraid of him.
24. She testified that whenever Buli did these things to her - touch her body; kiss her mouth; lick her vagina; lick her anus and poke her vagina; she was afraid.
25. She identified the Accused Veleki Bulicokocoko or Buli as the person who did these things to her.
26. She testified that this matter was reported to the Police by a neighbour and Buli was taken away by the Police.

27. Under cross examination it was put to Makelesi that her grandmother and aunt had forbidden her from going to Veleki's house but she went anyway. She denied this allegation.
28. It was also put to her in cross examination that she had wanted to go and "smack juice" but she was stopped from going and so she slipped away at night when they had gone to sleep. It was further put to her that on one of these occasions she had been caught and punished. She also denied these allegations.
29. It was also put to her in cross examination that she had tried to take a picture of her private part and that she would often go to Buli's house even when she had nothing to do. She denied these allegations.
30. She maintained her evidence in cross examination.
31. The other witness called by the State was Cpl. 4567 Maria Tunina Fane, currently of Totogo Police Station.
32. In 2022 she was based at the Navua Police Station and on the 12th of May 2023 she was on duty when she received an anonymous tip off of an alleged sexual abuse case in Sauniveiuto Settlement, Deuba.
33. She proceeded to the settlement and made the relevant inquiries. After they went and got the victim and got the Social Welfare Office to make the necessary inquiries. The victim was then taken to the Police Station where she recorded her statement and later took her for medical examination.
34. That was the evidence for the State.
35. At the close of the State's case, the Court found that the State had called relevant and admissible evidence supporting each offence in the Information therefore there is a case to answer.

36. The Accused, through counsel advised the Court that he would exercise his right to silence and he also would not be calling any witnesses therefore the Defence rested.

Analysis

37. The burden is on the State to prove each count beyond a reasonable doubt. The Accused has elected to exercise his right to remain silent. This is his right as he does not need to adduce any evidence or establish his innocence because the legal burden remains on the State throughout to prove all 4 counts beyond a reasonable doubt.

38. The Accused is charged with one count of Sexual Assault contrary to section 210 (1) (a) of the Crimes Act 2009, which provides: -

“Sexual assaults

210.-(1) An person commits an indictable offence (which is triable summarily) if he or she– (a) unlawfully and indecently assaults another person;
or (b) procures another person, without the person’s consent–
(i) to commit an act of gross indecency;
(ii) or (ii) to witness an act of gross indecency by the person or any other person. Penalty– Imprisonment for 10 years.”

39. The Accused is charged with the 3 counts of Rape contrary to section 207 of the Crimes Act 2009, which provides: -

“The offence of rape

207.-(1) Any person who rapes another person commits an indictable offence.
Penalty– Imprisonment for life.

(2) A person rapes another person if-

1. (a) the person has carnal knowledge with or of the other person without the other person’s consent; or
2. (b) the person penetrates the vulva, vagina or anus of the other

person to any extent with a thing or a part of the person's

body that is not a penis without the other person's consent; or

3. (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's

consent.

(3) For this section, a child under the age of 13 years is incapable of giving consent.”

33. For the first count of Sexual Assault, the State alleges that on the date and time in question, the Accused Veleki Bulicokocoko, unlawfully and indecently assaulted Makalesi Tinanibolaciri Tabuakovei, by kissing her mouth and touching her body.
34. The State needs to establish that on the date and time in question Veleki Bulicokocoko, with no lawful reason, kissed Makalesi on the mouth using his tongue and touched her body without her consent, in an indecent manner.
35. To prove the 4 counts of Rape, the State must establish the following elements of the offence: -
 - That between the 1st of December 2022 to 31st December 2022 at Deuba village in the Central Division Veleki Bulicokocoko
 - Unlawfully penetrated the vagina of Makalesi Tinanibolaciri Tabuakovei with his tongue.
 - Unlawfully penetrated the anus of Makalesi Tinanibolaciri Tabuakovei with his tongue.
 - Unlawfully penetrated the vagina of Makalesi Tinanibolaciri Tabuakovei with his finger.
40. At the time in question, Makelesi was 11 years of age, therefore consent is not an issue, and the State only needs to establish that penetration happened on the three occasions set out in the Information. This is by virtue of section 207 (3) of the Criminal Procedure Act 2009.

41. During the Trial, I closely examined the victim Makalesi as she gave her evidence. Her evidence was clear and compelling and stood up to cross examination by counsel. I found her to be a witness of truth.
42. Her testimony is basically unchallenged as the Accused exercised his right to remain silent and her testimony was unshaken in cross examination.
43. For the first count, I am satisfied that the State has established beyond a reasonable doubt that on a date between the 1st and the 31st of December 2022, Veleki Bulicokocoko unlawfully and indecently assaulted Makalesi Tinanibolaciri Tabuakovei by kissing her mouth and touching her body.
44. Veleki Bulicokocoko is therefore guilty of Count 1 – Sexual Assault
45. For the remaining 3 counts of Rape, I am satisfied that the State has established beyond a reasonable doubt that Veleki Bulicokocoko between the 1st of December and 31st of December 2022: -
- (i) Penetrated the vagina of Makalesi Tinanibolaciri Tabuakovei with his tongue.
 - (ii) Penetrated the anus of Makalesi Tinanibolaciri Tabuakovei with his tongue.
 - (iii) Penetrated the vagina of Makalesi Tinanibolaciri Tabuakovei with his finger.
46. As the victim was 11 years of age at the time in question, she was incapable of giving consent therefore the 3 counts of Rape are established and Veleki Bulicokocoko is guilty of Counts 2, 3 and 4 of Rape.

This is the Court's judgment in this matter: -

- 1. Veleki Bulicokocoko for the 1st Count of Sexual Assault, the Court finds you guilty.**
- 2. For the 2nd, 3rd and 4th Counts of Rape, the Court finds you Guilty.**

3. The Court will now hear from you in mitigation prior to your sentencing.



Mr. Justice Usaia Ratuveli
Puisne Judge



cc: Office of Director of Public Prosecutions
Office of Legal Aid Commission