

**IN THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Criminal Case No. 2 of 2009*

**STATE**

v

1. **MELIKI NAMATEA**
2. **LAISENIA NAVOLAU**
3. **KITIONE YACADRA**
4. **MAIKA NAKOROLEVU**

Counsel : **Mrs Vavadakua. A** for the prosecution  
**Mrs Boseiwaqa. K** for first and second accused  
**Ms Devi. S** for the third accused  
**Mr Prasad. J** for the fourth accused

Ruling : **9 August 2019**

**RULING**

No Case To Answer

1. All the above Accused person were jointly charged for one count of *Rape* under *section 149* and *150* of the *Penal Code*.
2. The name of the victim is suppressed to protect her interest and privacy and is referred to as "*the victim*" in this judgment. On the same note, the name of the second

prosecution witness is also suppressed and is referred to as the "victim's cousin" in this judgment.

3. The particulars of the offence are ;-

*"Meliki Namatea, Laisenia Navolau, Kitione Yacadra, Maika Nakorolevu on the 22<sup>nd</sup> day of December 2008, at Nadrano settlement, Seaqqa, in the Northern Division, had unlawful carnal knowledge of the victim without her consent."*

4. On 27 August 2013, all the Accused elected to be tried in the Magistrate Court. On the same day, all the Accused pleaded not guilty to the charge. On 6 February 2017, the Prosecutor informed the court that they are not relying on the caution interview.

5. The case proceeded to trial on 12 July 2018, continued on 8 August 2018, and continued on 1 October 2018, where the Prosecutor closed her case.

6. The Prosecutor called the Victim as the first witness, and the Victim's cousin as the second and final witness. All the defence Counsels make application for no case to answer. Direction were issued for filing of submission.

7. The submission of the fourth Accused was filed on 25 October 2018. The submission for the first, second, and third Accused were filed on 10 May 2019.

**Defence application**

8. The first and the second Accused submitted that the prosecution failed to prove the elements of the charge. The prosecution evidence is unreliable to convict on it.

9. The third Accused submitted that the prosecution failed to adduce any reliable or credible evidence to establish their case. No conviction can be made on the evidence of the prosecution.
10. The fourth Accused submitted that the prosecution was not able to establish the elements of the offence. The evidence was not able to identify the fourth Accused. There is no evidence to connect the fourth Accused to the allegation.

**Law**

11. Section 178 of the Criminal Procedure Act provides for application for no case to answer to be made at this stage of the proceeding.
12. Section 149 of the Penal Code state;-  

*"Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threat or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of the felony termed rape."*
13. The elements of the offence are;-
  - a. the accused,
  - b. had carnal knowledge of the victim,
  - c. without the consent of the victim.
14. The test for no case to answer in the Magistrate Court was set in the case of **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
  - "a. Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.
  - b. If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it."

15. The burden of proof is on the prosecution.

**Analysis and determination**

16. The Victim has identified all the Accused person in court as to who they are.

17. The Victim stated that on 22 December 2008, she was at Nadrano village. That was her first time to Nadrano village and she knew no one in that village. At night she accompanied her cousin to Droka'a house as her cousin wants to drink grog. At Droka's place she met all the Accused as all the people there were introducing themselves to them. She said she only spent about 2 hours at Droka's house and she left around 8pm. She went with one boy to one empty house where they had sexual intercourse and that boy informed her to wait there. There was no light in that house but lights are coming through the bamboo walls.

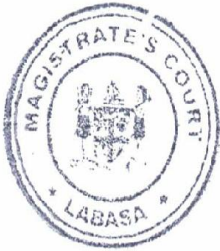
18. The Victim stated that while she was waiting alone in that empty house, she could feel someone and that person is Bale. Bale told her to keep quite or he will punch her. Bale pulled down her clothes, came on top of her and inserted his penis into her vagina. After Bale she could feel Kitione came on top of her. She knew it was Kitione because of his long hair and rough skin. She knew Kitione from his body and hair. When Kitione was on top of her she could feel his hair all over her. She feel Kitione inserted his penis into her vagina. She could not do anything. When they called Kitione, Kitione replied when he was on top of her. She said after Kitione then Namatea came and did the same thing that Kitione did to her. She said Namatea inserted his penis into her vagina. She knew

it was Namatea from his voice as they were walking together on the road to Nadrano village.

19. The Victim said that Maika came on top of her. Maika inserted his penis into her vagina.
20. There is no evidence from the Victim to say that Laisenia inserted his penis into her vagina. As such, I find no evidence implicating the second Accused in this case.
21. The Victim was clear on her evidence that she did not see the face of all the Accused on that night because it was dark and no lights in that house. The Victim testified that Kitione, Namatea, and Maika all inserted their penis into her vagina on that night. She did not see their faces but she recognise Kitione by his body and hair. She recognise Namatea and Maika through their voices. She recognise their voices during the 2 hours she spent with them at Droka's place. She said there were about 20 to 25 people in Droka's place on that night. The evidence is so unreliable. With that evidence on identification, it is unsafe for a court to convict on it.
22. As discussed above, there are some doubts on the identity of each Accused. With that doubt there is no need to deliberate on other elements of the offence as the case of the prosecution has fail on the identity of all the Accused. With these evidence, no conviction can be made against each Accused.
23. In this ruling, I find that there are insufficient evidence against each Accused that requires them to put their defence. I find that there is no case to answer. The application is granted.

24. Pursuant to section 178 of the *Criminal Procedure Act*, I dismiss the proceedings and acquitted all the Accused accordingly.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", enclosed within a blue oval scribble.

C. M. Tuberi

**RESIDENT MAGISTRATE**