

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 235 of 2014

STATE

v

RATU VILIAME RAUQUEUQE

Appearance : **SGT Naidu** for the prosecution
Ms Devi. S for the accused

Judgment : **22 February 2019**

JUDGMENT

1. The accused, Ratu Viliame Rauqueuqe was charged for *Defilement of Young Person between 13 and 16 years of Age*, contrary to section 215 of the *Crimes Decree*.
2. The name of the victim is suppressed to protect her interest and privacy and is referred to as "*the Victim*" in this judgment.
3. The particulars of the offence are; -
"Ratu Viliame Rauqueuqe on the 27th day of November 2013, at Labasa, in the Northern Division had unlawful carnal knowledge of the Victim, a young person being the age of 15 years".
4. The Accused pleaded not guilty to the charge on 14 August 2015. On the same day, the Counsel for the accused informed the court that they are not challenging the admission in the caution interview.

5. The case proceeded to trial on 8 November 2016. On the trial date, before the trial start, the Counsel for the accused informed the court that they admitted to the elements of the offence and they are relying on statutory defence. The Victim is the only witness called by the prosecution. The Accused is the only witness for his case. At the end of the trial, the Counsel for the accused seek time to file closing submission. The submission was filed on 23 February 2017.

Law

6. *Section 215(1) of the Crimes Decree, state:-*
“A person commits a summary offence if he or she unlawfully and carnally knows or attempt to have unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years”.
7. The elements of the offence are:-
 - a. *the accused ,*
 - b. *had unlawful carnal knowledge of the victim,*
 - c. *when victim is above 13 years and under 16 years.*
8. The burden of proof is on the prosecution to proof all the elements of the offence beyond reasonable doubt.

Prosecution evidence

9. The accused through his counsel has admitted to all the above elements of the offence. They have assisted the prosecution case in that regards.
10. The Victim stated in her evidence that in 2013, she was residing at Naduna with her cousin for education purpose. On the same year, she reported to the police of her pregnancy by Tu Vili. At that year, she was in form 3 at Ariya. Tu Vili was their neighbour and they are not related. They knew each other for 4 months. She had sexual intercourse with Tu Vili outside their house on two occasions and she identified Tu Vili as the person sitting in the accused dock, the accused. The accused never asked her on her age and she never mentioned her age to the accused. She tendered her birth certificate as *prosecution exhibit 1*.

11. In cross-examination, the victim stated that in November 2013, she did not have the same look and built as on the day she gave evidence. She was not fat in November 2013, and she was not that tall as her appearance on the day of the trial. The accused knew that she was in form 3 and later stated that she never informed accused that she was in form 3. In 2013, she had sex with the accused once and she never inform the accused that she was 15 years old. In re-examination, she stated that they knew each other for 1 month.

Accused evidence

12. The Accused stated that he also known as Tu Vili and he is 25 years old. The victim was his neighbour in 2013, at Naduna. He knew the victim for one month. The victim never inform him of her form and age. The victim was tall and fat in 2013, and with her built and appearance he thought the victim was 18 and 19 years of age. They had sex once on 27 November 2013.
13. In cross-examination he stated that he is in love with the victim. He had seen the victim with uniform. His answer to the caution interview was given voluntarily without any force. What he stated to the police and in court are true. He agreed that the victim does not look the same as in 2013. The victim now looks big and tall but in 2013 she was huge. She looks big in 2013 than today, today she looks slim.

Analysis and determination

14. With the accused admission to all the elements of the offence and with the evidence of the victim, I am satisfied that the prosecution has established and proved all the elements of the offence beyond reasonable doubt.
15. The accused is relying on a statutory defence that he has an honest and reasonable mistake on the age of the victim.
16. The statutory defence to this offence are provided in *section 215(2)* of the *Crimes Act* which state;-

“It shall be sufficient defence to any charge under sub-section (1) if it shall be made to appear to the court that the person charged had reasonable cause to believe, and did in fact believe that the person was of or above the age of 16 years.”

17. The accused stated that the victim was tall and fat in 2013, and with her built and appearance he thought the victim was 18 and 19 years of age. The accused stated that victim now looks big and tall but in 2013, she was huge. She looks big in 2013 than today, today she looks slim. The victim stated she was not fat and tall in 2013 like she appeared on the trial date in court.
18. The victim was not a big girl when she came to give her evidence. I agree with the accused that the victim was slim on the day of trial.
19. The defence submitted that the victim is not a credible witness. The admission of the accused to all the elements of the offence shows that the victim was telling the truth starting from day when she lodge the report to the police in regards to this offence. Though there was some inconsistency to her evidence but those are immaterial to the elements of the offence, considering the accused admission.
20. It is a common knowledge that a growing person from 2013 will definitely grew bigger in 2016, and I take judicial notice of that. In assessing the credibility of the accused and the victim, I find the victim to be more credible than the accused on reasons discussed above. Accordingly, I will accept the evidence of the victim that she was not fat and tall in 2013, and she grew fat and taller on the day of trial in 2016.
21. The test in relying on this statutory defence is *reasonable cause to believe*. The accused stated that he had seen the victim with uniform. That is a big indicator to the accused that the victim was schooling and still a child. He should take more caution and not take advantage of the situation for his evil sexual desire. The accused is an older person and matured person from the victim and precaution will require the accused to ask the victim on her age. Not only that, a reasonable precaution is on the accused not to approach a girl with school uniform and asked her for sexual intercourse as she is still a child.
22. In assessing the evidence, I find that there is no reasonable cause on the accused to believe that the victim was above 16 years in November 2013. The

victim was still in uniform and schooling apart from her small built in 2013 as stated by the victim.

23. With the physical built of the victim in 2016, no reasonable mistake on the age of the victim that she was over 16 years in 2013 can be made. The statutory defence relied upon by the Accused was not honest and not a reasonable mistake. The evidence of the accused was offered to protect him from his wrongdoing. The accused was hoping to escape his wrongdoing by relying on that defence, but unfortunately it not assisting him in this case.
24. In my judgment, I find the Accused guilty as charged and I convicted the Accused accordingly.

28 days to appeal.



A handwritten signature in blue ink, appearing to read 'C. M. Tuberi', written in a cursive style with a large, sweeping flourish at the end.

C. M. Tuberi
RESIDENT MAGISTRATE