

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 497 of 2011

DPP

v

TEVITA DUTABOTO

Counsel : **Mrs Vavadakua. A** for the prosecution
Ms Devi. S for the accused

Judgment : **11 February 2019**

JUDGMENT

1. The juvenile, *Tevita Dutaboto* was charged for one count of *Rape* under section 207(2)(a) and (3) of the *Crimes Decree*.
2. The name of the victim is suppressed to protect her interest and privacy and will be referred to as "*the victim*" in this judgment.
3. The particulars of the offence are :-
"Tevita Dutaboto on the 11th day of August 2011, at Lutukina, Dreketi, in the Northern Division, had carnal knowledge of the victim without her consent."
4. On 23 April 2013, the juvenile pleaded not guilty to the charge. On 4 May 2016, the Counsel for the juvenile informed the court that they are not challenging the caution interview.

5. The case proceeded to trial on 2 June 2017. The Prosecution called 2 witnesses. The juvenile is the only witness for his case as he wished to give evidence on oath when his right to remain silent was explained to him.

Law

6. Section 207(2)(a) and (3) of the Crimes Act state;-
 - (2) A person rapes another person if –
 - (a) the person has carnal knowledge with or of the other person without the other person's consent.
 - (3) For this section, a child under the age of 13 years is incapable of giving consent"
7. The elements of the offence that must be proven beyond reasonable doubt by the prosecution are;-
 - a. the juvenile,
 - b. without consent,
 - c. had unlawful carnal knowledge,
 - d. with the victim.

Prosecution Evidence

8. PC 4355 Rusiate is the first witness for the prosecution. He is the interviewing officer for this case. He identify the juvenile in court and tendered the record of interview in itaukei as *prosecution exhibit 1* and the translated version as *prosecution exhibit 1A*. In cross-examination he agreed and confirmed that the translation of question and answer 38 are not correct. In re-examination, he said that the itaukei caution interview is more accurate. The mango tree is missing from the translation in question 37. The translation of question 38 is not correct and the correct translation for the answer are "*I lay her down, undress my underwear, I took out my erected penis and penetrated into her vagina.*"

9. The victim is the second witness for the prosecution. Her date of birth is 2 July 2005. On 11 August 2011, she came back from pee when Tevita pulled her to one engine room. He took off her trousers and penetrate his ball into her vagina. She felt the pain when he did that to her and she shouted and he went. She look at him and she saw his face. After that she went home and she was scared. She identified the juvenile in court.
10. In cross-examination, she stated that there is no mango tree beside the engine room. She spoke to the police one day after the incident. She stated that she was telling the truth to the police when her statement was taken. The juvenile put his penis into to her vagina and she felt the pain. She dressed herself when the juvenile left. When she reached home, she tells her mother that she was playing outside. When her mother hit her, then she told her mother what the juvenile did to her. They did not went to the mango tree beside the house.
11. In re-examination, she stated that she did not tell her mother when she came out from the engine room because she feared that her mother will hit her.

Accused evidence

12. The juvenile stated that he reside in Lutukina village. In 2011, he was schooling at Lutukina District School and was in class 7. On 11 August 2011, he was 14 years old and at 7pm, he was at home and he went to watch movie. He went to Jovesa's house to watch movie and he saw the victim there. He told the victim for them to go to the mango tree and she took the lead and he followed her. When they reach there, he told the victim to put her panty down and she lie down. He put his underwear down and lie on top of the victim. He put his penis into the victim's vagina. He tried to put his penis into her vagina but could not go inside her vagina. In cross-examination, he stated that it went through the two skins separate on the side. There is some degree of penetration inside but did not go right inside.

Analysis and Determination

13. The juvenile has confirmed penetration in his cross-examination. That support the victim's evidence of penetration.
14. The victim stated that her birth date is 2 July 2005, and she is 11 years old at the time of the trial. She did not state her age at the time of the offence but that can be calculated from her evidence on her date of birth which was not disputed by the defence. If she was born on 2 July 2005, she would be 6 years old at the time of the offence. Apparently, the victim was under 13 years old at the time of the offence and is incapable of giving consent by law. Accordingly, the juvenile's act of penetrating his penis into the victim's vagina was unlawful and without consent.
15. In assessing the credibility of the victim and the juvenile, I find the juvenile not a credible witness as in his evidence in chief he is denying the penetration and later agrees to the penetration during cross-examination. Accordingly, I find the victim as credible witness as she was telling the truth about the penetration which was confirmed by the juvenile during cross-examination. I accept the evidence of the victim that she was raped by the juvenile.
16. As a trier of facts, I find that the Prosecution has established all the elements of the offence beyond reasonable doubts.
17. In my judgment, I find the juvenile guilty as charged for one count of rape.

31 days to appeal to the Court of Appeal.



C. M. Tuberi
RESIDENT MAGISTRATE

