

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

CRIMINAL CASE NO: HAC 319 of 2011

BETWEEN: THE STATE

AND

AISAKE NAULUMOSI

**COUNSEL: Ms L Latu and Ms R Uce for the State
Ms N Nawasaitoga and Mr P Tawake for the Accused**

Dates of Trial: 11-13/11/2013

Date of Summing Up: 15/11/2013

Date of Judgment: 18/11/2013

[Name of the victim is suppressed. She will be referred to as WT]

JUDGMENT

[1] Aisake Naulumosi has been indicted with the following charges on information dated 17th day of January, 2012 by the Director of Public Prosecutions.

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 149 and 150 of the Penal Code, Cap.17

Particulars of Offence

AISAKE NAULUMOSI between the 1st of January 2003 and the 31st day of December 2003 at Nasoki Village, Moala, Lau in the Eastern Division, had unlawful carnal knowledge of WT without her consent.

SECOND COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to Section 154(1) of the Penal Code, Cap.17.

Particulars of Offence

AISAKE NAULUMOSI between the 1st day of January 2005 to the 31st day of December 2007 at Kinoya, in the Central Division, unlawfully and indecently assaulted WT.

THIRD COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212(1) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

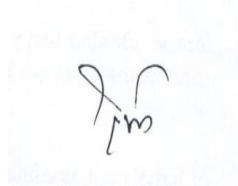
AISAKE NAULUMOSI between the 1st day of January 2011 to the 18th September 2011 at Nabua in the Central Division, unlawfully and indecently assaulted WT.

- [2] After trial on these charges, the assessors returned with mixed opinions. 1st and 3rd assessors returned the verdict of not guilty against all the charges while 2nd assessor returned the guilty verdict against all the charges. I direct myself on my own summing up and on looking at the evidence in its entirety I find that I cannot agree with not guilty opinion against the accused. I find the not guilty opinion of the 1st and 3rd assessors against the accused appears to be perverse.

- [3] The victim in this case is the step daughter of the accused.
- [4] According to victim, in the year 2003 she was in Class 1 and was residing at Nasoki. One day in the year 2003 her mother went to Suva leaving her and her brother under the care of the accused. Accused is her step father. After her mother's departure to Suva, she was sleeping in the hospital. The accused carried her home from the hospital and took off her clothes inside the room. After taking off the clothes he inserted his penis into her vagina. She did not agree as it was very painful. Nobody was in the bedroom when the accused raped her. Due to fear and tender age, she did not divulge this incident to anybody.
- [5] Between 2005-2007 her family moved to Kinoya and stayed with the accused elder brother's family. In the year 2007 she was in class 5 and was 10 years old. During that period a Kati (fundraising) was organized in the house. The accused, her mother and other members gathered to drink grog outside the house. While she was studying in the room accused came to the room, locked the door and started to touch her breast and her vagina. Due to fear she did not shout and remained calm. After touching her body he left the room.
- [6] In the year 2008 they moved to Nabua and settled down at Nabua Muslim League. She was schooling at Nabua Primary School and was in Class 6 in the year 2011. One day, in the year 2011 the accused once again touched her breast and her vagina forcibly. Due to fear she did not tell anybody. She never gave her consent to the accused.
- [7] In the year 2011 she lodged her first complaint to her class teacher Ms Sigalevu. The teacher then informed this to the school Head Teacher who then called the police. She gave her statement to police and underwent a medical examination. Her date of birth is 18/08/1996. She did not divulge these incidents to anybody due to fear of the accused and her mother.
- [8] In the cross examination the victim corroborated what she said in her examination in chief. Victim admitted that she did not tell police that the accused came to hospital and carried her home while she was sleeping. She repeatedly said that it was the accused who sexually abused her.

- [9] Savaira Sigalevu was the class teacher of grade 7-8 at Nabua Primary School in the year 2011. On 19/09/2011 the victim informed her that her step father had raped her at the veranda of Suva Muslim School. She said to her when she was in class 3 her step father carried her from the place where she was sleeping and raped her. Victim could not control her tears when she told this to the witness.
- [10] According to the history given by the victim to the doctor, she had been subjected to sexual abuse by her step father thrice. First time when she was in Class 1 her step father was intoxicated and kissed her entire body and touched her genital area. Also had penile penetration in to her vagina. She was too scared to cry for help. Second time when she was in Class 3 he touched her breast but she managed to cry out for help. Last year he touched her breast but her Aunt heard her cry out for help. She denied consensual sexual relationship with the accused.
- [11] According to professional opinion of the doctor who prepared the report is that the victim's hymen not seen in its entirety. Penetration incident was 5 years ago and therefore acute trauma to vagina cannot be seen this late. Finding would suggest previous penetration of the vagina.
- [12] Accused gave evidence and denied the charges. Accused called victim's mother and daughter of his brother. Both defence witnesses said that during the relevant period they never heard from the victim that the accused sexually abused her.
- [13] Victim was 6 years old in 2003 when her step father had sexual intercourse with her. She was subjected to sexual assaults between 2005-2007 and in 2011. Due to fear and her tender age she did not divulge this to anybody up to year 2011. Even she did not tell her mother as she thought her mother would beat her up if she tells this to her. She admitted that she could not tell police that her step father carried her from the hospital. She finally told this to her class teacher. Victim repeatedly said that the accused was the person who sexually abused her.
- [14] The evidence presented by prosecution is very strong and it establishes the charges beyond reasonable doubt.

[15] In the premise, I find that the accused is guilty of all three charges filed against him. I convict him accordingly.

A handwritten signature in black ink, appearing to be 'P Kumararatnam', is centered on the page. The signature is written in a cursive style with a large initial 'P' and 'K'.

P Kumararatnam
JUDGE

At Suva
18/11/2013