

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

**CRIMINAL CASE NO: HAC 055/2012**

**BETWEEN : THE STATE**  
**AND : SANAILA RAKULA TUIKUBULAU**  
**COUNSEL : Ms A Vavadakua for the State**  
**: Mr J Savou and Ms T Kean for the Accused**

**Dates of Trial : 25-28/11/2013**

**Date of Summing Up : 29/11/2013**

**Date of Judgment : 02/12/2013**

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

**JUDGMENT**

[1] Sanaila Rakula Tuikubulau has been charged with the following charge on information dated 23<sup>rd</sup> day of March, 2012 by Director of Public Prosecutions.

**The Charge**

*Statement of Offence*

**RAPE:** Contrary to Section 207(1) and 207(2) (a) of the Crimes Decree No: 44 of 2009.

*Particular of Offence*

**SANAILA RAKULA TUIKUBULAU** on the 20<sup>th</sup> day of January 2012, at Baulevu Village, Naitasiri, in the Central Division, had unlawful carnal knowledge of SB without her consent

- [2] After trial on the charge, the assessors returned unanimous opinion of guilty against the accused. I direct myself on my own summing up and on looking at the evidence in its entirety I find that I cannot agree with the guilty verdict of the assessors. I find the guilty verdict of the assessors appears to be perverse.
- [3] In this case prosecution charged the accused for committing one count of Rape against the victim.
- [4] Victim in this case is 16 years and 8 months old at the time of the incident. She lived in Vatuwaqa but went to Baulevu Village, Naitasiri to look after two children of Kalo Vakaloloma and Kitione Akau. Her schooling was abandoned due to her parent's separation. Kalo's house is a big one. They ran a canteen in one of the rooms but was closed when the victim went there. The house has three bedrooms and a sitting room. Wash room is situated in the upstairs. The accused is a grass cutter who comes usually on Mondays to cut grass.
- [5] On 20/01/2012 the accused came to Kalo's house during heavy shower. He had dinner there and wanted to stay in the house. When he had dinner the victim was talking to her sister at the old canteen. Then Kalo's husband requested her to arrange bedding for the accused. As per the request victim kept the beddings on the settee. When she turned after keeping the beddings on the settee, accused held her and pushed her towards the laundry area. She

could not run as she was wearing a long skirt. He then put her on a concrete floor, removed her skirt and under garment and inserted his penis into her vagina. When she tried to scream accused closed her mouth with his hand. After having sex forcibly accused slept on the settee in the veranda. She then wore her clothes and cried. She did not tell anybody at that time but she told her sister in the morning. Later in the day accused's wife had come to Kalo's house. At that time she told Kalo as to what happened to her in the night. She could not tell this incident to Kalo immediately as they were fast asleep in the night. She then reported the matter to the police.

[6] In the cross examination victim said that apart from Kalo's family, her sister and Kalo's sister also spent the night on 20/01/2012. Accused had proposed to her to marry him in order to look after his child. This was said while both sat on the steps leading to the wash room. After the incident she had gone to her sister's room. Witness admitted that she did not tell in her examination in chief what she told in the cross examination. The victim said that she lodged her complaint to the police because she felt sorry for accused's wife.

[7] In the re- examination witness said that she did not raise cries as the accused wanted to speak to her.

[8] The victim in her examination in chief said that the accused grabbed her when she went to give the beddings to the accused. She further said that she could not shout as the accused closed the washing room door. But in the cross examination she said that she sat on the steps which is leading to the washing room to discussed the proposal the accused made to her. The accused proposed her to marry him in order to look after his child. Even though she went to her sister's room immediately after the incident, she did not tell her. Further she said that she lodged her complaint to police after feeling sorry for

accused's wife. In the re-examination she said that she did not raise cries as accused wanted to speak to her.

[9] The evidence of the victim tainted with serious contradictions and omissions which certainly affect the root of the case. It creates a genuine doubt in my mind and the benefit of doubt must be given to the accused.

[10] It is the duty of the prosecution to prove the case beyond reasonable. But in this case the prosecution has failed to prove the case against the accused beyond reasonable ground.

[11] Therefore, I acquit the accused from the charge.

[12] 30 days to appeal.

P Kumararatnam

**JUDGE**

At Suva

02/12/2013

