

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 339/2012

BETWEEN : **THE STATE**

AND : **KAMINIELI KAITAVUA**

COUNSEL : **Mr M Vosawale for the State**
Mr J Savou for the Accused

Trial Dates : **10-14/03/2014**

Date of Summing Up : **17/03/2014**

Date of Judgment : **18/03/2014**

JUDGMENT

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

[01] **KAMINIELI KAITAVUA** has been charged with the following charges on information dated 16th November, 2012.

FIRST COUNT

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: Contrary to Section 213(1) (b) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

KAMINIELI KAITAVUA, on the 28th day February, 2012, at Navuniyaro Village, Naitasiri in the Eastern Division, with intent to insult the modesty of **M.T** exhibited his penis to **M.T** intending that his penis be seen by **M.T**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

KAMINIELI KAITAVUA on the 28th day of February, 2012, at Navuniyaro Village, Naitasiri, in the Eastern Division, penetrated the vagina of **M.T** with his finger, without the consent of the said **M.T**

- [02] After the closing of prosecution case, the defence made an application under Section 231(1) Criminal Procedure Decree 2009 invited this court to consider whether the accused has a case to answer in respect of 2nd count. After considering the prosecution evidence and both counsels' submissions, this court has delivered a ruling on 13/03/2014 in respect of 2nd count. He was acquitted from 2nd count.
- [03] Trial proceeded in respect of 1st count and the assessors unanimously returned the verdict of not guilty.
- [04] I direct myself on my own summing up and on looking at the evidence in its entirety I accept the assessors' majority opinion on count number 01.
- [05] The victim giving evidence before this court said that on 28th of February, 2012 she was at Navuniyaro Village and her father and mother had gone to the plantation. She was cooking with her aunt under her house and when her aunt went into the house, the accused stretched his hand and touched her vagina. He then told her to touch his penis. After touching her vagina the accused put his hand into his mouth. She could felt pain when he touched

- her vagina. When he told her to lean against the post, she ran away from the scene.
- [06] She said nothing to the doctor who examined her. The history was given to the doctor by the victim's mother. The medical examination was done on 01/03/2012. No fresh injuries or laceration was seen in her vagina.
- [07] Victim's mother in her evidence admitted that the victim made similar allegations against two villagers but were not reported to the police.
- [08] According to the accused, the victim was looking at him while he was having a bath. Further once she had touched the body of Temisi who was sleeping in the victim's house. This was seen by defence witness Sulueti Nabule.
- [09] After careful consideration of the evidence presented by prosecution, I find it contains lots of ambiguity and creates a genuine doubt.
- [10] Hence, I agree with the assessors and find the accused is not guilty of the charge of Indecently Annoying Any Person Contrary to Section 213(1) (b) of the Crimes Decree No: 44 of 2009. He is acquitted accordingly.

P Kumararatnam
JUDGE

At Suva
18/03/2014

