

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

**CRIMINAL CASE NO.: HAC 207 OF 2011**

**STATE**

**-v-**

**OTETI SIVOINATOTO**

**Counsels** : **Mr. J. Niudamu for the State**  
**Ms. J. Nair for the accused**

**Date of Trial** : **24 March 2014**

**Date of Summing Up** : **25 March 2014**

**Date of Judgment** : **25 March 2014**

**JUDGMENT**

1. The Accused is charged under following counts:

***First Count***  
***Statement of Offence***

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

***Particulars of Offence***

**OTETI SIVOINATOTO** between September 2010 and May 2011 at Lautoka in the Western Division had carnal knowledge of **MN** without her consent.

**Second Count**  
**Statement of Offence**

**ABORTION**: Contrary to Section 234 (1) and 4 (b) of the Crimes Decree No. 44 of 2009.

**Particulars of Offence**

**OTETI SIVOINATOTO** between April 2011 and August 2011 at Lautoka in the Western Division did an act on **MN**, with intent to procure abortion.

2. When the case was taken up for trial on 24.3.2014, accused pleaded guilty to the 2<sup>nd</sup> count of abortion and admitted the summary of facts today.
3. After carefully considering accused's Plea for the 2<sup>nd</sup> count to be unequivocal, this Court finds the accused guilty for Abortion contrary to Section 234 (1) and 4 (b) of the Crimes Decree No. 44 of 2009.
4. After trial the majority of the assessors found accused Guilty for the Rape count. One assessor found accused Guilty for Defilement.
5. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
6. Considering the nature of the evidence before the Court, I am convinced that the prosecution had proved the case beyond reasonable doubt.
7. The complainant in her evidence said that in 2010 in one night, accused had come to her room wearing a towel. Accused had undressed her and inserted his penis into her vagina. It was painful and she had started crying. She had tried to move but he was holding her. She did not consent to sexual intercourse at anytime. She had not reported the matter to Police as the accused used to threaten her with a knife and slap her.
8. Under cross examination she admitted that she had good relationship with the partner of the accused, her friends at the school and the teachers. Further, she had visited her mother and grandparents. She admitted that she never made a complaint to anyone of them. She further admitted that she did not tell police about accused threatening her with a knife or slapping her. She denied that she approached the accused for sexual intercourse or consenting for sex.

9. In re-examination she told that she did not tell mother or grandmother as the accused supported her in education and the accused threatened not to tell anyone. She was afraid to tell the teachers or friends as the accused had threatened her. She did not mention to police about threats as she was in great shock.
10. The majority of the assessors have believed the version of the complainant that she did not consent for sexual intercourse.
11. The Accused elected to give evidence. His position was that on a date in September 2010, while he was in the kitchen cooking, the complainant came to the kitchen after a shower wearing a towel and took him to her bed room saying "come quickly, I want to show you something". His partner and a neighbor were talking in the sitting room. He was dragged into the room by the complainant using both her hands. Then she had locked the door. Then the complainant was on the bed naked and told him to put his penis into her vagina quickly. He could not do anything but followed her instructions. After 5-7 seconds he begged that someone will come. He had told her that we will continue tomorrow when aunty is away. He did not force her to have sex with him at any time. He did not threaten or slap her. He had continued to have sex with her.
12. Under cross examination he admitted that he had sexual intercourse with the complainant in September 2010 and he knew that she was 14 years old at that time. When prosecution version was put to him, he denied that version. When asked by Court whether he got an erection at the time the complainant dragged him and asked him to put his penis into her vagina he said 'no'.
13. The majority of the assessors have rejected the evidence of the accused. Considering all other evidence available and applying the test of probability to the accused's evidence, I agree with their decision to reject the evidence of the accused.
14. I find the majority verdict of the assessors were not perverse. It was open to them to reach such a conclusion on the evidence. I concur with their majority verdict. Considering all, I find the accused Guilty in respect of the 1<sup>st</sup> count of Rape.
15. Accordingly, I convict Oteti Sivoinatoto for Rape charge under Sections 207 (1) and (2) of the Crimes Decree, 2009.
16. This is the Judgment of the Court.

Sudharshana De Silva

**JUDGE**

**At Lautoka  
25<sup>th</sup> March 2014**

**Solicitors : Office of the Director of Public Prosecution for State  
P & Nair Lawyers for Accused**