

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

**CRIMINAL CASE NO.: HAC 207 OF 2013**

STATE

-v-

NAVITALAI NAIVALULEVU

**Counsels** : Ms. L. Latu for the State  
Ms. L. Raisua for the accused  
**Date of Trial** : 7 August 2014 - 12 August 2014  
**Date of Summing Up** : 13 August 2014  
**Date of Judgment** : 13 August 2014

(Name of the victim is suppressed. She is referred to as AN)

**JUDGMENT**

1. The Accused is charged under following counts:

FIRST COUNT  
*Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

NAVITALAI NAIVALULEVU between the 18<sup>th</sup> of August 2012 and 2<sup>nd</sup> day of September 2012 at Vatukoula in the Western Division, inserted his finger into the vagina of AN, a 10 year old girl.

**SECOND COUNT**  
*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

**NAVITALAI NAIVALULEVU** between the 18<sup>th</sup> of August 2012 and 2<sup>nd</sup> day of September 2012 at Vatukoula in the Western Division, inserted his finger into the vagina of **AN**, a 10 year old girl.

**THIRD COUNT**  
*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) and (2) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

**NAVITALAI NAIVALULEVU** between the 03<sup>rd</sup> of September 2012 and 30<sup>th</sup> day of September 2012 at Vatukoula in the Western Division, indecently assaulted **AN** by licking and sucking the vagina of the said **AN**.

**FOURTH COUNT**  
*Statement of Offence*

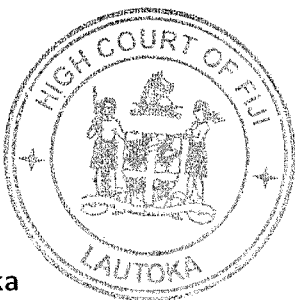
**RAPE:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

**NAVITALAI NAIVALULEVU** between the 03<sup>rd</sup> of September 2012 and 30<sup>th</sup> day of September 2012 at Vatukoula in the Western Division, inserted his penis into the vagina of **AN**, a 10 year old girl.

2. The three assessors unanimously found accused Guilty of all the counts against him.
3. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
4. Considering the nature of the evidence before the court, I am convinced that the prosecution had proved the case beyond reasonable doubt.

5. Prosecution case was based on the evidence of the victim. She was 10 years old at the time of the incident. Accused is her grand-uncle. Accused had inserted his finger into her vagina once and inserted his penis twice into her vagina. She had told this to her friends, teachers and mother about a year later. Medical evidence confirms penetration to the vagina. The accused had admitted all the offences in his caution interview to the police.
6. The accused denied the charges giving evidence. Assessors have rejected his evidence. I am of the view that his evidence is inconsistent and there are reasons to reject his evidence as untrue.
7. I am satisfied that evidence is sufficient to establish the guilt of the accused beyond reasonable doubt in respect of each charge.
8. In my view, the assessor's verdicts were not perverse. It was open for them to reach such conclusion on the evidence. I concur with the verdicts of the assessors.
9. I find accused Guilty as charged on the counts of Rape contrary to Section 207 (1), (2) (a) & (b) and (3) of the Crimes Decree No. 44 of 2009 and one count of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Decree No. 44 of 2009 and convict him for the counts against him.
10. This is the Judgment of the Court.



At Lautoka  
13<sup>th</sup> August 2014

  
Sudharshana De Silva  
JUDGE

Solicitors: Office of the Director of Public Prosecution  
Office of the Legal Aid Commission for the Accused