

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 228/2012

BETWEEN: THE STATE

AND: WATISONI SERELEVU

COUNSEL: Mr S Nath and Ms S Navia for the State
Mr P Tawake and Ms K Vulimainadave for the Accused

Dates of Trial: 13-14/10/2014

Date of Summing Up: 15/10/2014

Date of Judgment: 16/10/2014

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

JUDGMENT

[01] Watisoni Serelevu has been charged with the following charge on information dated 30th day of October, 2012 by Director of Public Prosecutions.

The Charge

Statement of Offence

RAPE: Contrary to Section 207(1) and 207(2) (a) and (3) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

WATISONI SERELEVU from the 1st day of January 2011 to the 31st day of December 2011, at Wailoku in the Central Division, penetrated the vulva of U.L, a child under the age of 13 years, with his fingers.

- [02] 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.
- [03] In this case prosecution charged the accused for committing one count of Rape against the victim.
- [04] In this case the victim gave evidence first. According to her the incident happened in 2011 but the complaint was lodged in the year 2012. The victim did not explain the reason why the complaint was lodged very late. In her complaint the victim said that she complaint to the police last week. According to the doctor the injury was very recent one. It is quiet consistent with the date of examination (07/07/2012). But the victim's position is that the incident happened in 2011. According to the doctor if this incident happened in 2011 there would not be any injury in the victim's vagina. There is a contradiction with regards to the place of incident. In the information the place of incident mentioned as "Wailoku". But according to the victim the incident happened in New Town. The victim said when she went to the police to lodge the complaint, she saw her mother talking to the police officers. When she was at New Town her step father also stayed with them.
- [05] The victim in her history to the doctor said that her dad put his finger in her vagina on two occasions last week. But in her evidence she only referred to one incident which was supposed to have happened in the year 2011. Her complaint was in the year 2012. Further in her evidence the victim said that the incident happened while she was sleeping on a bed. But in her statement she said that the incident happened while she was sitting in the house.

- [06] The paramount duty of the prosecution is to prove the accused guilty beyond reasonable doubt. It is not for the accused to prove his innocence. The burden of proof lies on the prosecution to prove the accused guilty beyond reasonable doubt, and that burden stays with them throughout the trial.
- [07] After careful consideration of the evidence presented by the prosecution, I find it contains serious contradictions and ambiguity which certainly affects the root of the case. This creates a serious doubt about the case and benefit of doubt must accrue to the accused person.
- [08] Therefore, I acquit the accused from the charge.
- [09] 30 days to appeal.



A handwritten signature in blue ink, appearing to be "P Kumararatnam".

P Kumararatnam
JUDGE

At Suva
16/10/2014