

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 077/2013

BETWEEN : **THE STATE**

AND : **DENNIS MARK HAZELMAN**

COUNSELS : **Ms A Vavadakua for the State**

**Ms K Vulimainadave with Mr P Tawake for the
Accused**

Dates of Trial : **20-21/10/2014**

Date of Summing Up : **22/10/2014**

Date of Judgment : **24/10/2014**

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

JUDGMENT

[01] Dennis Mark Hazelman has been charged with the following charge on information dated 20th day of October, 2014 by Director of Public Prosecutions.

First Count

Statement of Offence

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

Particulars of Offence

DENNIS MARK HAZELMAN between the 17th day of August 2012 and the 3rd day of September 2012 at Samabula in the Central Division had carnal knowledge of E.W, without her consent.

Alternative Count

Statement of Offence

DEFILEMENT OF A GIRL BETWEEN 13 AND 16 YEARS OF AGE:
Contrary to Section 215 (1) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

DENNIS MARK HAZELMAN between the 17th day of August 2012 and the 3rd day of September 2012 at Samabula in the Central Division had unlawful carnal knowledge of E.W being a person above the age of thirteen years but bellow the age of sixteen years.

- [02] After trial on the charge, the assessors returned unanimous opinion of not guilty against the accused. In respect of alternative charge 1st and 3rd assessors returned with not guilty verdict while 2nd assessor returned with guilty verdict. 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 decision of the assessors in respect of the charge and the alternative charge. I find the decision in respect the charge and the alternative charge of the assessors appears to be perverse.
- [03] In this case the prosecution has charged the accused for committing one count of Rape against the victim and alternatively he has been charged for committing defilement.
- [04] In this case the victim E.W. gave evidence first. According to her she never consented for sex with the accused. It was Senimili who agreed to have sex with the accused. But the victim was craftily taken to the spot by Senimili. It was the first time the victim met the accused. She had never met the accused before the incident. The victim was a small girl at the time of the incident. Due to insistence the victim only agreed to kiss the accused. As she was small she always thought that she would be protected by the adults. The house

where the alleged incident happened was dark at the time of the offence. Victim could not run from the house as Senimili was blocking the entrance. Further the accused was too heavy for her to resist at that time. Victim could not shout as her mouth was blocked by the accused's chest. As a result of this incident she become pregnant and delivered a baby boy when she was studying in Class 08. The photograph which was marked as P1 shows her appearance in 2012.

- [05] Medical Examination Form of the victim was tendered to this court through the doctor. As per report she was pregnant at the time of examination. In the history the doctor had written that the accused had sexual intercourse with the victim.
- [06] The accused in his evidence admitted meeting the victim and Senimili, taking the victim to a partly constructed house in the night, removing her clothes, requesting for sex and kissing her. He denied having sexual intercourse with the victim. He was 25 years and 11 months old at the time of the offence.
- [07] After careful consideration of the evidence presented by prosecution, I find that the prosecution had proved the Rape charge against the accused beyond reasonable doubt.
- [08] Therefore, I convict the accused for the charge of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree No: 44 of 2009.
- [09] 30 days to appeal.



P Kumararatnam
JUDGE

At Suva
24/10/2014