

**THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 350 OF 2016**

**STATE**

**v**

**SERUPEPELI BOLALILAI**

**Counsel** : **Ms S. Serukai and Ms S. Tivao** for the **State**  
**Mst. Kean and Ms V. Filipe** for the **Accused**

**Dates of Trial** : **7<sup>th</sup>; 8<sup>th</sup>; 9<sup>th</sup>; and 10<sup>th</sup> November 2016**

**Summing Up** : **11<sup>th</sup> November 2016**

**Judgment** : **11<sup>th</sup> November 2016**

*(Name of the complainant is permanently suppressed and will be referred to as A.B.)*

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**JUDGMENT**

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- [1] The accused, **SERUPEPELI BOLALILAI** is also charged, contrary to Section 207(1),(2)(b),(3) and 208 of the Crimes Decree No. 44 of 2009 for committing Rape and Attempted Rape on A.B., who was 7 years old at the time of the offending.
- [2] He pleaded not guilty to these two charges and the ensuing trial lasted for 3 days. The complainant, A.B., Noela, a medical officer and two Police Officers, who were

involved with the caution interview of the accused, have given evidence for the prosecution while the accused offered evidence in support of his denial on both charges.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the counts of Rape and Attempted Rape.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the 8 year old complainant and the caution interview of the accused which contained some admissions. According to her, the accused after calling her into his room by giving her a 2 dollar coin, tried to insert his penis into her vagina and then inserted two fingers into it.
- [6] During her cross examination, A.B. admitted that the accused did not insert his fingers into her vagina and repeated that claim in her re examination. There were two other inconsistencies highlighted by the accused.
- [7] Witness Noela, has seen the accused kneeling in front of the complainant who was naked from her waist down, when she peeped into the room of the accused to see whether he was there.
- [8] The accused in his evidence admitted that he only kissed on top her vagina and suggested during the cross examination of the complainant that he kissed it “*very fast*”. He denied any penetration of her vagina by fingers or attempting to commit Rape by trying to insert his penis into her vagina.
- [9] The medical evidence revealed that the complainant had dried blood clots in her groin when examined on the same day of the incident and her left *labia minora* had an abrasion, which could have bled forming dried blood clots.
- [10] In relation to his caution statement, where he made certain admissions on relevant matters to this case, the accused claimed that the Police treated him unfairly by refusing to take him to hospital subsequent to the alleged punching on his ribs during at the time of arrest. He claims that he was frightened and had no opportunity of reading the recorded answers as he has no reading glasses with him at that time. He contended that the interview statement is not voluntarily made.
- [11] In addition, he was kept in the Police for 5 nights violating the Constitutional restriction of 48 hours
- [12] The assessors have found the evidence of prosecution as truthful and reliable, as they unanimously found the accused guilty to the counts of Rape and Attempted

Rape. They were directed in the summing up to evaluate the probabilities of the version of events as presented by the parties. The inconsistencies of the evidence of A.B. were also highlighted with suitable cautions.

- [13] The three assessors have obviously rejected the denial of the accused on both counts. It was a question of believing whom. They have also accepted the caution interview statement as voluntarily made by the accused.
- [14] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. The "*inconsistency*" of A.B on penetration could probably due to her limited understanding of the propositions put to her during cross examination. She displayed confused state when conceptual positions are put to her in other instances as well. I concur with the opinion of the assessors.
- [15] It is the considered opinion of this Court that the caution interview statement, tendered as **P.E. No. 2** is voluntarily made by the accused. His evidence relating to the circumstances under which it was made is improbable and inconsistent. The complaint of detention for 5 nights has already been considered by this Court in the ruling on *voir dire*. This Court already ruled of its voluntariness after a *voir dire* and upon reconsideration of the evidence finds no reason to change its view. It contained a truthful statement, voluntarily made by the accused.
- [16] I am also satisfied that evidence of the prosecution presented through the complainant and the admissions made in the caution interview statement, is sufficient to establish the elements of Rape and Attempted Rape, namely penetration of vagina, and the accused did an overt act which manifests his intention to penetrate her vagina by his penis. It also established the identity of the accused also beyond a reasonable doubt.
- [17] The accused is already convicted of the offence of Sexual Assault upon his plea of guilty.
- [18] In the circumstances, I convict the accused, SERUPEPELI BOLALAILAI to the count of Rape and also to the count of Attempted Rape.
- [19] This is the Judgment of the Court.

**Achala Wengappuli**  
**JUDGE**

**At Suva**

**This 11<sup>th</sup> Day of November 2016**

***Solicitor for the Prosecution : Office of the Director of Public Prosecution, Suva***  
***Solicitor for the Accused : Legal Aid Commission***