

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

**Criminal Case No. 63 of 2014**

**STATE**

**V**

**KAND SAMI**

**Counsels:** Ms. A. Vavadakua for State  
Ms. S. Dunn (L.A.C.) for Accused

**Date of Summing Up** : 17 May 2016

**Date of Judgment** : 17 May 2016

**JUDGMENT**

[1] The accused was charged with the following two offences:

**FIRST 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***

**KAND SAMI**, between 1<sup>st</sup> day of January 2012 and  
the 31<sup>st</sup> day of December 2012, at Naqere

Settlement, in Nabouwalu, in the Northern Division, had carnal knowledge of (name suppressed), a girl under the age of 13 years.

## **SECOND COUNT**

### ***Statement of Offence:***

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

### ***Particulars of Offence***

**KAND SAMI**, on the 17<sup>th</sup> of August 2014, at Naqere Settlement, in Nabouwalu, in the Northern Division, had carnal knowledge of (name suppressed), without her consent.

- [2] After trial in this Court the three assessors returned with unanimous opinions of guilty on each count.
- [3] The Court agreed with the assessors and the accused was found guilty on each count and convicted accordingly.
- [4] The evidence for the prosecution came in the main part from the young lady victim who I shall call Linda (not her real name).
- [5] Linda was but 12 years old at the time of the first offence when she told of sleeping in a large group of visitors at the accused's home.
- [6] She said that during the night the accused came out of another room and dragged her into that room, undressed her and raped her.

- [7] With regard to the second charge she said that in 2014 (aged 13) she was returning from church when she was intercepted by the accused on the road. He then led her by the hand up a hill side to a deserted spot where he held her for a long time and again raped her.
- [8] As a result of that incident she was late arriving home and father being suspicious interrogated her. She was too scared to tell anything, but after a beating from her father she revealed all.
- [9] A medical officer testified that on examination, three days after the second incident, Linda's hymen was not intact and there was a small abrasion on her vaginal wall.
- [10] The accused gave evidence and called two witnesses. The accused said that with regard to the first incident he was not sleeping in another room but with several others including Linda and her father. He denied that he had any contact with Linda that night.
- [11] With regard to the "hillside" incident in August 2014, he said that at the time when Linda claimed to have been held and abused by him on the hillside, he had been busy farming, then drinking grog and there was no such thing as a "tryst" on the hill. At the time he was sitting under a coconut tree eating vakalolo.
- [12] The second defence witness was his aunt in whose home the party of visitors and the accused were sleeping on the night of the first alleged incident. She testified that the accused was sleeping alongside the party of visitors and nothing happened to Linda that night. She remembers in 2014 making vakalolo for

the accused and he took it outside to eat it under a coconut tree.

[13] The third and final witness for the defence was the son of the second defence witness and the accused's cousin. He said that on the night in 2012 he was sleeping next to the accused and being a light sleeper he would have been aware of the accused leaving the room with Linda. There was no such movement.

[14] As to the 2014, "hillside" incident, he was able to say that at about 2.30pm he had gone to a well near the house where Linda and her father were staying and he was able to see through an open door that Linda and her father were both asleep inside the house.

[15] He also said that on the way to the well he saw the accused eating vakalolo under a coconut tree.

[16] I found that the evidence of Linda, now 15, to be very confident and convincing. When challenged as to whether she was making it up because her father had given her a hiding, she was adamant that she had told the truth.

[17] I agree with the prosecutor who in her closing address queried whether a child would make up stories of a sexual nature in the detail she did or even whether her elders would have her make up such stories.

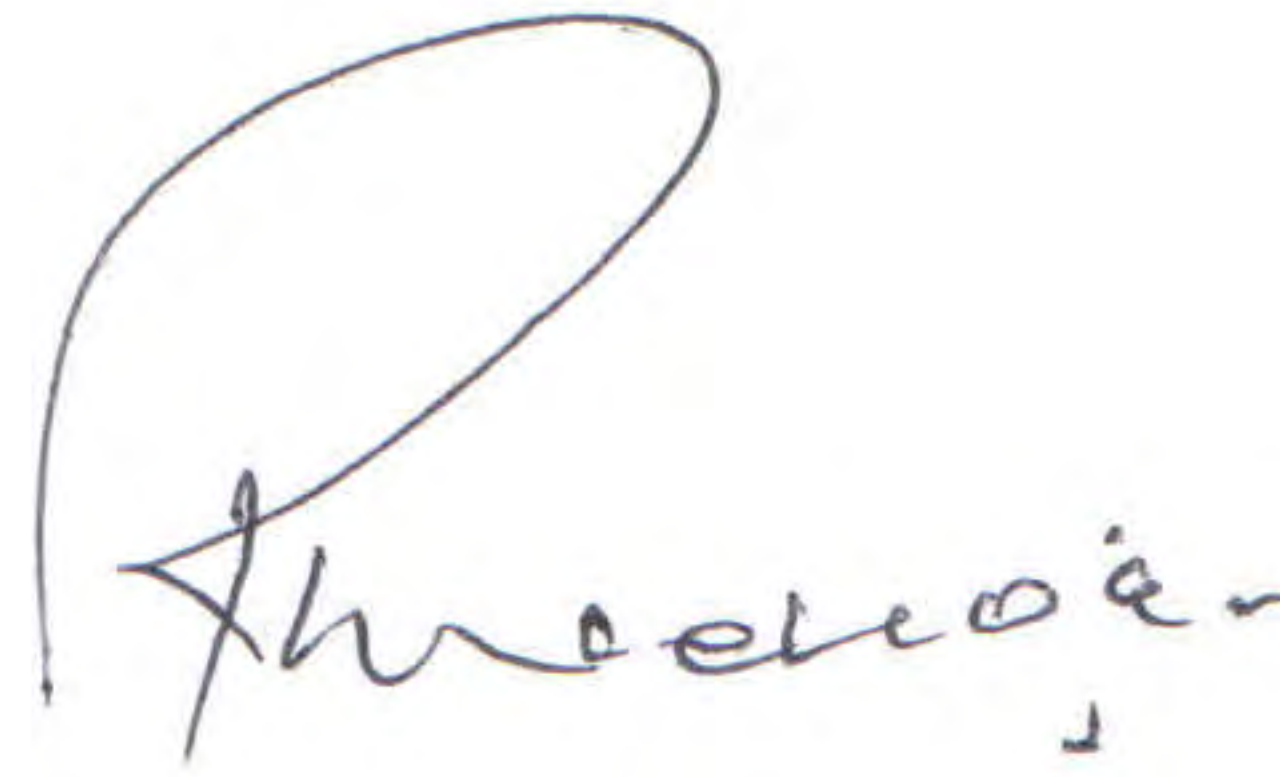
[18] Although the accused does not have to prove anything to the court, I found that his evidence and that of his two witnesses to be untruthful and contrived. Both of his witness couldn't wait to tell me about the accused eating vakalolo under a coconut tree

and both were anxious to tell me that the accused slept with the large group of visitors in 2012.

[19] I found that the evidence of the aunt and her son (DW2 and DW3) to be “coached”; which was obvious when they went “off-script”. Suddenly their memories faded.

[20] I detail my findings on the fatuousness of the defence evidence, not as a reason to find the accused guilty, as I directed in my own summing up but as a reason that I found nothing in the defence case that made me doubt the evidence of the complainant.

[21] I therefore, in agreement with the assessors found the accused guilty of both charges.



**P.K. Madigan**  
**Judge**



At Labasa

17 May 2016