

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 435 OF 2012

STATE

VS

MOSESE NATUWAWA SAUKITAKALI

Counsel : **Mr M. Vosawale & Mr S. Seruvatu** for the **State**
: **Mr N. Bulisea** of **Vakaloloma & Associates** for the **Accused**
Summing Up : **29th September 2016**
Judgment : **30th September 2016**

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

JUDGMENT

- [1] The accused, MOSESE NATUWAWA SAUKITAKALI is charged under three representative counts of Indecent Assault, contrary to Section 154(1), Rape, contrary to sections 149 and 150 of the Penal Code and also for Indecent Assault, contrary to Section 212(1) of the Crimes Decree No. 44 of 2009, on A.B., who was 9 years old at the time of the initial offending.
- [2] He pleaded not guilty to the three charges and the ensuing trial lasted for 3 days. The complainant, A.B. and her mother have given evidence for the prosecution while the accused offered evidence in support of his denial.

- [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 three counts contained in the information.
- [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 21 year old complainant. She was born on 1st August 1995. According to her, the accused is the *de facto* partner of her mother and since 2004; they lived with the accused in his house. During 2004, whilst asleep she felt the accused touching her body and her breast. He threatened her not to tell this to her mother who also slept next to the accused.
- [6] In relation to the count of Rape, the complainant said in 2006, she returned home from school hoping to attend a party. After she had a shower, she returned to the bedroom to dress up. Then she was put on the bed by the accused and inserted his fingers into her vagina. Then he inserted his penis into her vagina. She was in pain and was crying. She hated what he did to her. Thereafter, she washed herself up as she felt blood in her vagina. She was threatened by the accused with a cane knife, not to reveal this.
- [7] The 3rd count referred to an incident where the complainant was sleeping and the accused, having laid himself on top of her, touched her body and breast. She ran to her mother, who was at a neighbour's house at that time, and informed her of what happened.
- [8] During her cross examination, A.B. admitted having stated in her statement to Police that she was made pregnant by the accused but said in evidence that she implicated the accused as the father of her child as she hated him for what he did to her. There were few other inconsistencies highlighted by the accused.
- [9] Her mother said in evidence that in 2004 she saw the accused touching the breast of the complainant in one early morning and she slapped him for what he did. Then in 2012, the complainant was beaten by the accused and they decided to lodge a report against him. She was unemployed at that time and had nowhere else to go.
- [10] The accused in his evidence denied all three charges and said that the complainant had spent a night with a boy called Pita and he had beat her up for that, upon her mother's permission. He came to know about the allegation against him of Rape and pregnancy only in 2012 when the Police arrested him.
- [11] The assessors have found the evidence of prosecution as truthful and reliable, as they unanimously found the accused guilty to the three charges. 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.

- [12] The three assessors have obviously rejected the denial of the accused. It was a question of believing whom.
- [13] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I concur with the opinion of the assessors.
- [14] Count No. 2, where the accused was charged under Sections 149 and 150 of the Penal Code. In relation to this count, it is the considered view of this Court that the 9 year old complainant was not intellectually or physically matured enough to give consent to the accused, when he inserted his penis into her vagina in 2006.
- [15] The acts of touching of her body and breast in 2004 and also of touching of her body and breast by the accused, after mounting on top of the complainant in 2012, are undoubtedly considered as indecent acts by right minded persons, as it was so offensive to current standards of modesty and privacy.
- [16] Therefore, I am satisfied that the evidence of the prosecution, presented through the complainant and her mother, is truthful and reliable and also is sufficient to establish the elements of the offences of Indecent Assault and Rape.
- [17] Accordingly, I convict the accused, MOSESE NATUWAWA SAUKITAKALI on all three counts, as charged.
- [18] This is the Judgment of the Court.



ACHALA WENGAPPULI

JUDGE



At Suva

This 30th Day of September 2016

Solicitor for the State* : *Office of the Director of Public Prosecution, Suva
Solicitor for the Accused* : *Vakaloloma & Associates

