

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

**Crim. Case No: HAC 163 of 2016**

**STATE**

**v.**

**SR**

**Counsel:** Ms. K. Semisi for State  
Ms. L. Manulevu for Accused

**Hearing:** 15<sup>th</sup> to 18<sup>th</sup> August 2017

**Summing Up:** 21<sup>st</sup> August 2017

**Judgment:** 22<sup>nd</sup> August 2017

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**JUDGMENT**

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1. The names of the victim and the accused are suppressed.
2. The accused is charged with three counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The Particulars of the offences are that:

**FIRST COUNT**

**SR** on the 29<sup>th</sup> day of March 2014 at Soso Village, Kadavu in the Eastern Division had carnal knowledge of **AB**, without her consent.

**SECOND COUNT**

SR on the 29<sup>th</sup> day of March 2014 at Soso Village, Kadavu in the Eastern Division unlawfully and indecently assaulted AB, by kissing her cheeks and neck.

**THIRD COUNT**

SR on the 13<sup>th</sup> day of April 2014 at Soso Village, Kadavu in the Eastern Division had carnal knowledge of AB, without her consent.

**FOURTH COUNT**

SR on the 13<sup>th</sup> day of April 2014 at Soso Village, Kadavu in the Eastern Division unlawfully and indecently assaulted AB, by kissing her lips.

**FIFTH COUNT**

SR on the 16<sup>th</sup> day of April 2014 at Soso Village, Kadavu in the Eastern Division had carnal knowledge of AB, without her consent.

3. The hearing commenced on the 15th of August 2017 and concluded on the 18th of August 2017. The Prosecution adduced the evidence of three witnesses including the victim. The Defence called the evidence of the accused, but did not call any other witnesses. Subsequently, the learned counsel for the Defence and the Prosecution made their respective closing addresses. It was followed by the Summing Up.
4. The three assessors unanimously found in their opinions that the accused is guilty for all the counts as charged.
5. Having carefully considered the evidence adduced during the hearing, the respective closing addresses of the parties, the Summing Up and the unanimous opinions of guilt given by the three assessors, I now proceed to pronounce my Judgment as follows.
6. The Prosecution adduced the evidence in order to establish that the accused came to the victim and unlawfully and indecently kissed her cheeks and neck while she was sleeping in the night of 29th of March 2014 at his house. He then forcefully inserted his penis into her

vagina without her consent. The victim is the biological daughter of the accused. Again on the 13th of April 2014, the accused came to the victim and unlawfully and indecently kissed her lips while she was lying on the bed. He then forcefully inserted his penis into her vagina without her consent. In respect of the fifth count, that the accused again forcefully inserted his penis into the vagina of the victim while she was lying on the bed on the 16th of April 2014.

7. The Accused admitted in his evidence that he had sexual intercourse with the victim on the 29th of March 2014, 13th of April 2014 and 16th of April 2014. He claims that the victim consented to have sexual intercourse with him on those three occasions. Accordingly, the main dispute in this matter as far as the three counts of Rape are concern, is whether the victim gave her consent to the accused to have sexual intercourse with her on those three occasions.
8. I first draw my attention to the evidence adduced by the defence, where he claims that he had consensual sexual intercourse with the victim on these three occasions. However, the Prosecution tendered in evidence the record of the caution interview made by the accused, where he has admitted that he forcefully had sexual intercourse with the victim without her consent. The accused in his evidence claims that certain answers that have been recorded in the caution interview, incriminating him to this crime are incorrect. He alleges that the Interviewing officer has fabricated those answers.
9. The accused in his evidence explained that he was angry and upset about the behaviour of the victim when she was naked and drying up her body in the bedroom. He said that he wanted to get a stick and hit her. However, he did not execute that idea as she met him after long separation. He then said that he was in tears when he saw the victim was lying naked and fondling her breast while touching her private parts from one hand. According to this evidence adduced by the accused, it appears that he was very much concern about the conduct of the victim. However, all of a sudden he has completely changed into a different person when the victim as he claimed, came on top of him nakedly. It is my opinion that the evidence given by the accused is improbable and not credible.

10. In respect of the caution interview, the accused admitted in his evidence that he was treated well by the Police. He properly understood the questions posed to him by the Interviewing Officer. He then answered to these questions freely and voluntarily. When he was offered an opportunity to read it or read over to him by the Interviewing Officer, he declined to exercise that right. Apart from the mere allegation that certain incriminatory answers that have been recorded in the caution interview were fabricated, I do not find any material to suggest the same. I am mindful of the fact that the accused does not need to prove anything. However, the court is required to consider the evidence given by the accused if he chose to do so.
11. In view of these reasons, I do not find the account given by the accused is true or may be true. I further find that it does not create any reasonable doubt about the case of the Prosecution.
12. The learned counsel for the Defence in her closing address suggested that the delay in reporting this matter makes it less likely that the complaint she eventually made was true. The victim explained in her evidence the reasons for the delay. Actually she had informed Nurse Ro Iva about this incident soon after she returned to Soso Village from the house of the accused. However, it is not sufficiently clear about the nature of information she divulged to Nurse Ro Iva. The victim further said that she was scared of the accused as he threatened her that he will kill her if she tells anyone about this incident. Moreover, the Uncle, Aunty and the Priest have told her not to report this matter to the Police, though she wanted to do it. In view of these reasons, it is my opinion that the delay in reporting this matter to the Police has not affected the credibility and reliability of the evidence given by the victim.
13. The victim in her evidence explained that she did not scream or shout for help as no one live around the house. Sergeant Moape in his evidence confirmed that the house of the accused is situated in a remote forest area away from the village. The victim further said that she had to wait till her brother to come in order to go back to Soso village. It was not possible for her to walk alone to the village through the forest.

14. I find the evidence given by the victim is consistent. I am mindful of the fact that she affirmatively answered to the proposition put to her by the defence that she came on top of the accused when she had second sexual intercourse with the accused. However, during the re-examination she clarified it saying that it was only the accused who came on top of her and had forceful sexual intercourse with her. The victim was straight and consistent and not evasive in giving her evidence, though she was not comfortable in answering certain questions pertaining to these alleged sexual encounters. I accordingly accept her evidence as truthful, reliable and credible.
15. As I discussed in Paragraph 9, I find the admissions made by the accused in the caution interview are truthful and credible. Hence, I accept these admissions as credible and reliable evidence against the accused.
16. In view of these reasons, I am satisfied that the Prosecution has successfully proven the accused is guilty for these three counts of Rape and two counts of Sexual Assault as charged. I accordingly find no cogent reasons to disagree with the unanimous opinions of guilt given by the three assessors.
17. In conclusion I hold that the accused is guilty for each of the three counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and each of the two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and convict him to the same accordingly.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe  
Judge

At Suva  
22<sup>nd</sup> August 2017

Solicitors  
Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused