

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 18 of 2017

STATE

V

JALE RAVULA

Counsel : Ms. Amelia Vavadakua for the State
Mr. Vilisoni Tuicolo with Ms. Manisha Singh for the Accused

Dates of Trial : 27-28 February 2018

Summing Up : 1 March 2018

Judgment : 1 March 2018

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "LDU."

JUDGMENT

[1] The accused Jale Ravula is charged with the following offence:

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

JALE RAVULA, on the 5th day of April 2017, at Nawaca Village in Bua, in the Northern Division, penetrated the vulva of **LDU**, a child under the age of 13 years, with his lips.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 2 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of the charge of Rape brought against him.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the provisions of Section 207 (1) and (2) (b) and (3) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] The Assessors were directed that in order for the prosecution to prove the count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 5 April 2017);
 - (iii) At Nawaca Village in Bua, in the Northern Division;
 - (iv) Penetrated the complainant's vulva, with his lips; and
 - (v) At the time the complainant was under 13 years of age.
- [7] The above individual elements were further elaborated upon in my summing up.
- [8] The Assessors were also directed that, in relation to the count Rape, if they find that the prosecution although failing to establish beyond any reasonable doubt that the accused, on 5 April 2017, penetrated the complainant's vulva with his lips, has satisfied beyond any reasonable doubt that the accused, on 5 April 2017, unlawfully and indecently assaulted the complainant by putting his lips on the complainant's vulva; as an alternative, that they were allowed to look at the lesser offence of Sexual Assault, in terms of Section 210 (1) (a) of the Crimes Act, though the accused is not formally charged in the Information for that offence.
- [9] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Agreed Facts*":

1. That the Accused in this matter is Jale Ravula.
2. That the complainant in this matter is LDU, who is below the age of 13 years.
3. That on the 5th day of April 2017, the complainant and the Accused was together in the bedroom of Jale Ravula in the village of Nawaca in Bua.
4. That the complainant calls the accused "Bu Jiale" meaning grand-father Jiale.

[10] Since the prosecution and the defence have consented to treat the above facts as "Agreed Facts" without placing necessary evidence to prove them, such admissions constitute sufficient proof of those facts.

[11] Based on the said Agreed Facts the identity of the accused, the date of incident (5 April 2017), the place of incident (Nawaca Village in Bua), and the fact that the complainant is below 13 years are proved. The only element left for the prosecution to prove is that the accused penetrated the complainant's vulva, with his lips.

[12] The complainant, her mother (Tulia Rasoro), and a medical officer (Dr Talei Vasuitaukei) gave evidence for the prosecution. The defence relied on the evidence of the accused himself.

[13] The complainant testified that she is 5 years old.

[14] On the day of the incident, the accused had called her by waving at her. She had gone into the accused's house. She had taken out her shoes and gone to him. The accused had taken her to his room. There was no one else in the room at the time. The accused had then laid her down. He had then taken out her dress and trousers (her three quarter trousers). She said at that time she had not been wearing any clothes. The witness said "then he drink my pipi".

[15] When the complainant was asked what did the accused use to drink her pipi, she said he used his mouth. When asked to show what part (of the mouth) the witness demonstrated by showing her lips. When questioned as to whether the accused was drinking her pipi inside or outside, the witness said inside.

[16] When asked to show in what part of her body is her pipi, the witness clearly pointed towards the area of her groin.

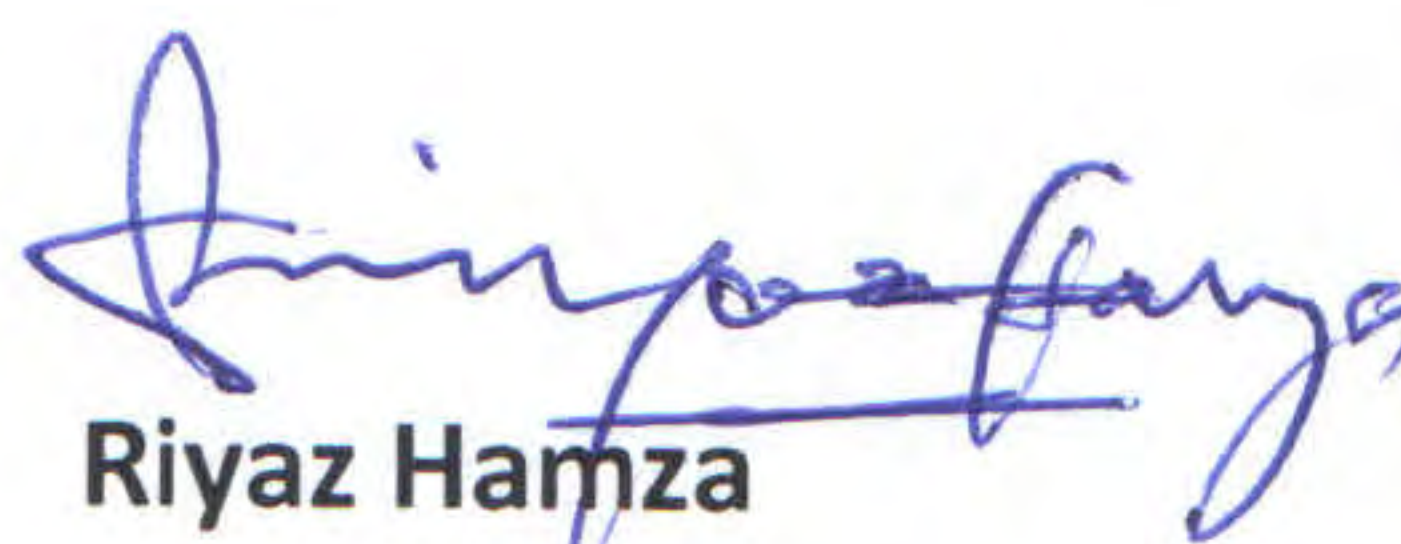
[17] The complainant's mother, Tulia Rasoro, testified that on 5 April 2017, she was at home. Around 4.00 in the evening she had been baking buns. At that time Seru (Seruwaia Vunibola) had come home. Her daughter had followed Seru. Seru had told the witness to ask her daughter what she was doing in the accused's room. When Tulia had asked her daughter as to what happened, initially she had not said anything. The witness had again asked her daughter what did she go and do in the accused's room. Her daughter had replied thus "Bu Jiale take out my dress and my trousers and drink my pipi (vagina)".

- [18] Tulia had immediately gone to the accused's house, together with the complainant, and confronted him. The accused had said that the complainant came and asked him if he can make one suki for her (meaning Fijian tobacco).
- [19] The Medical Officer, Dr Talei Vasuitaukei, testified that she conducted a medical examination on the complainant, on 6 April 2017. However, in this case the prosecution was relying on the doctor's evidence not in relation to the medical examination conducted by her on the complainant, but to explain to Court the structure of the female genitalia (external and internal genitalia of a female).
- [20] The doctor testified that the female genitalia is divided into two main parts – the external genitalia and internal genitalia. The external genitalia is also known as the vulva. These parts can be seen without touching the patient. It is best seen when a person is lying down with the legs bent at the knee, like at the time of delivery (delivery position).
- [21] There are several parts of the vulva – it consists of the mons pubis (the top most part of the vulva that you can see), the labia majora, labia minora, the clitoris and the opening of the vagina (the hymen). The Diagram drawn by the Doctor depicting the external genitalia/vulva of a female was tendered to court as Prosecution Exhibit **P1a**.
- [22] The doctor testified that the internal genitalia of a female would include the vagina, the uterus, the fallopian tubes and the ovaries. The Diagram drawn by the Doctor depicting the internal genitalia of a female was tendered to court as Prosecution Exhibit **P1b**.
- [23] When asked to explain in her opinion what the complainant meant when she said "the accused drank her pipi", the doctor stated that "if you translate the word drank it would amount to sucking. When we drink we open our mouth to drink from a cup. I think she described the act of sucking".
- [24] The accused is 76 years of age. He totally denies the allegation against him.
- [25] He testified that on the day of the incident the complainant had come to his house around 10.00 in the morning. He had been sitting in his wife's room at the time. His grandson Tomasi has also been there. At that time his wife (who is suffering from paralysis for the past 9 years due to a stroke) had crawled out of the room. The witness said that his daughter-in-law Seruwaia (his son Viliame's wife) was also at home at the time.
- [26] The accused testified that after that he was lying down on his bed while the two children, the complainant and Tomasi were playing in the room. He had told them to stop playing. The children had also been looking at the photos that were inside the room (photo album).
- [27] Thereafter, Seruwaia had told the complainant to go out and the complainant had left.

- [28] The Assessors have found the evidence of prosecution as truthful and reliable, as they have by a unanimous decision found the accused guilty of Rape. Therefore, it is clear that the Assessors have rejected the evidence of the accused in this regard.
- [29] In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. Accordingly, I concur with the unanimous opinion of the Assessors.
- [30] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offence of Rape with which the accused is charged.
- [31] In the circumstances, I find the accused Jale Ravula guilty as follows:

Count 1-Rape- Guilty.

- [32] Accordingly, I convict the accused on the count of Rape.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LABASA

Dated this 1st Day of March 2018



Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitors for the Accused : Office of the Legal Aid Commission, Labasa.