

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 159 of 2017

STATE

v.

APISAI RAKAVONO

Counsel: Ms. S Serukai for State
Mr. F. Vosarogo for Respondent

Date of Hearing: 12th to 14th March 2018

Date of Summing Up: 15th March 2018

Date of Judgment: 16th March 2018

JUDGMENT

1. The name of the Complainant is suppressed.
2. The Accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act. The particulars of the offence is that:

"Apisai Rakavono on the 6th of May, 2017 at Koroqaqa, Baulevu, in the Central Division, had carnal knowledge of AB, a child under the age of 13 years."

3. The hearing commenced on the 12th of March, 2018 and concluded on the 14th of March 2018. The Prosecution adduced the evidence of three witnesses, including the Complainant. The Accused opted to exercise his rights to remain in silence. Accordingly, the defence did not adduce any evidence. Subsequently, the learned

counsel for the prosecution and the defence made their respective closing submissions. I then delivered my summing up.

4. The three assessors in their unanimous opinion found the accused is not guilty for the offence of Rape, but found the accused guilty for the alternative count of "Attempted to Commit Rape".
5. Having carefully considered the evidence adduced during the hearing, the respective closing submissions of the counsel, the summing up and the unanimous opinion of the assessors, I now proceed to pronounce my judgment as follows.
6. The Complainant in her evidence explained about this incident. She specifically stated that the accused put his penis into her female private part. The Complainant then explained that she referred to the vagina as the female private part. She then said that the accused tried to put his penis into her vagina but could not do it as her vagina was sore. The complainant then explained that she felt the soreness when the accused put his penis into her vagina.
7. I am mindful of the fact that the Complainant was eleven years old at the time of this incident took place. It is obvious that a child at such a tender age would not be able to correctly and precisely explained the extent and the nature of the penetration made in to her vulva or the vagina by the accused with his penis.
8. The Fiji Court of Appeal in **Reddy v State [2018] FJCA 10; AAU06.2014 (8 March 2018)** has discussed the definition of the carnal knowledge as stipulated under Section 207 (2) (a) of the Crimes Act, where Prematilaka JA held that:


"Carnal knowledge is complete on penetration to any extent [vide section 206 (4) of the Crimes Act]. It is clear that for the purpose of section 206 (4) carnal knowledge means sexual intercourse involving penetration of vulva, vagina or anus by the penis. Carnal knowledge includes sodomy [vide section 206(5)]. A person rapes another if the former has carnal knowledge with or of the other person without the

latter's consent [vide section 207(2) (a) of the Crimes Act] and carnal knowledge, in so far as section 207 (2) (a) is concerned, therefore, should mean penetration to any extent of the vulva, vagina or anus of the victim by the penis of the accused."

9. Accordingly, the court is required to satisfy beyond reasonable doubt that the accused had penetrate to any extent of the vulva or the vagina of the Complainant with his penis. According to the evidence given by the Complainant, the accused had tried to put his penis into her vagina. While he was trying to put it into her vagina, she had felt soreness in her vagina.
10. Doctor Elvira in her evidence explained the nature of the female genitalia. The vulva is the outer side of the female genitalia, which consists with *labia majora*, *labia minora*, *mons pubis*, vaginal vestibule and posterior fourchette. Doctor Elvira has noted superficial abrasions and bruises on the inner side of left *labia minora*. She then explained that such injuries could have caused by an erected penis, applying force or rubbing on that area. In order to reach to the location of the injuries, it has to go through the opening of *labia majora*.
11. During the cross examination, Doctor Elvira said that such injuries could have caused by vaginal infection or unprotected horse riding, *etc.* She did not rule out the possibility of penetration in to the vulva or the vagina, though the hymen of the Complainant was intact.
12. There is no evidence to suggest that the Complainant had unprotected horse riding, though she admitted that she has ridden horses. Moreover, there is no evidence to suggest that the Complainant had been suffering from any vaginal infection.
13. Having taken into consideration the evidence given by the Complainant and the professional opinion given by Doctor Elvira, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused had penetrated the vulva of the Complainant with his penis.

14. The Complainant in her evidence explained that she was scared and felt ashamed. That was the reasons she did not tell anyone else, specially to her mother about this incident. The evidence adduced by the prosecution established that the Complainant was close to her aunty than her mother. Eventually, the Complainant told her aunty about this on the Sunday, when she was about to leave to Ra with the accused and her mother.
15. The Aunty of the Complainant, in her evidence explained that she had to think about this incident before she made her mind to report it to the Police. She had to think about the relationships between her family and the family of the Complainant. Once she spoke to her husband, she then made up her mind to go and report this incident to the Police. Having considered the explanations given by the Complainant and the Aunty in their evidence, I do not find that the delay in reporting this matter to the Police has affected the credibility and reliability of the evidence given by them.
16. In view of the reasons discussed above, I accept the evidence given by the Complainant as credible, reliable and truthful evidence. Accordingly, I find the prosecution has proven the accused guilty for this offence of rape beyond reasonable doubt.
17. Accordingly, I have cogent reasons to disagree with the unanimous opinion of not guilty given by the three assessors.
18. In conclusion, I hold that the accused is guilty for this offence of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
16th March 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Mamlakha lawyers for Defence.