

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 290 of 2017

[CRIMINAL JURISDICTION]

STATE

V

APENISA RAILEQE

Counsel : Ms. S. Serukai for State
Ms. M. Ratidara for Accused

Hearing on : 26th to 28th March 2018

Summing up on : 28th March 2018

Judgment on : 28th March 2018

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

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

RAPE: contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

APENISA RAILEQE, between the 12th of August, 2017 and 27th of August, 2017 at Nadaro Village, in the Central Division, had carnal knowledge of **LG**, who is a child under the age of 13 years old.

2. The assessors have returned with the unanimous opinion that the accused is guilty of the above offence.
3. I direct myself in accordance with the summing up delivered to the assessors this date and the evidence adduced during the trial.
4. The complainant was 08 years old when she gave evidence. I was not satisfied that she was competent to take the witness' oath but I was satisfied that she was intelligent enough to understand questions and provide relevant answers and also that she understood the duty of having to tell the truth. Therefore, I allowed her to give unsworn evidence.
5. I found the evidence of the complainant to be credible and reliable. Given her age and what I have observed when she gave evidence, her reluctance to tell her mother, the second prosecution witness about what happened to her until she was taken to the hospital is acceptable. The second prosecution witness was a credible and a reliable witness. I am mindful of the complainant's evidence that she could not say how her mother came to know about the incident. However, I accept the second prosecution witness' evidence that the complainant told her about the encounter with the accused after the complainant was taken to the hospital. This evidence is consistent with the complainant's evidence.
6. I accept the evidence of the third prosecution witness. Her evidence supports that there was penetration of the complainant's vagina during time material to this case.
7. As it was admitted that the complainant was below the age of 13 years at the time of the incident, she is incapable of giving consent in terms of section 207(3) of the Crimes Act.

8. In the light of the evidence presented in this case, I am satisfied that the prosecution has proved the elements of the offence of rape beyond reasonable doubt.
9. In the circumstances, I agree with the unanimous opinion of the assessors that the accused is guilty of the offence as charged.
10. I find the accused guilty of the offence of rape as charged and convict him accordingly.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera
JUDGE

Solicitors:

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