

IN THE HIGH COURT OF FIJI  
AT LABASA  
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 32 OF 2017

STATE

v

IMANUELI SENIKUBA

Counsel : Ms. A. Vavadakua for the State  
Ms. S. Devi with MS. K. Boseiwaqa for the Accused

Hearing on : 03<sup>rd</sup> September – 05<sup>th</sup> September 2018

Summing up on : 05<sup>rd</sup> September 2018

Judgment : 05<sup>th</sup> September 2018

*(Name of the complainant is permanently suppressed and will be referred to as SL.)*

### JUDGMENT

- 1 The accused, Imanueli Senikuba is charged, contrary to Section 207(1), (2)(b) and (3) of the Crimes Decree No. 44 of 2009 for committing Rape on SL, who was 9 years old at the time of the offending.

2. He pleaded not guilty to the charge and the ensuing trial lasted for 3 days. The complainant *SL*, Amelia the grandmother of *SL*, and a Police Officer, who was involved with the arrest and charge of the accused, have given evidence for the prosecution while the accused offered evidence in support of his denial of charge.
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 count of Rape.
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 12 year old complainant. According to her, the accused after calling her into his room by offering a 50 cents, asked her to remove her panty and sit down and licked her vulva with his tongue.
6. At the commencement of the trial, the accused was absent and trial was proceeded in absentia. In his absence, the accused was defended by the Legal aid.
7. The first witness called on behalf of the prosecution was the complainant's Grand Mother, Amelia Kuini. Her evidence was that;  
She was married to the village and was living there since 1977. Her son Iowane's daughter, *SL* is attending primary school. This witness recognises the birth certificate of *SL* and produces it marked PE1. In August 2015, she remembers an incident which took place, involving *SL*. She has come and told that Senikuba, the accused had offered some money to *SL* to come into the house. Senikuba is related to her as a cousin brother. This witness is said to have asked *SL* to relate it to Salote, another daughter of the witness, who is also living in the same village.

8. The Second witness for the prosecution was *SL*. The Court, first having tested her capacity to understand the gravity of the oath and being satisfied that the witness understands the responsibilities associated with such, she was sworn in on the Holy Bible. Her evidence was that in 2015 she has been in class 3 and In August, one day, when she was going to the toilet at Motea's house, Immanueli Senikuba, the accused, who was living at Motea's house, waived his hand and showing 50 cents, has called her. She has gone into the Motea's house and while inside the accused has asked her to remove her panty and sit down. Having done so, the accused has parted her legs with his hands and licked the vagina of the child. Thereafter the Child *SL* has run away. Inside the accused's' house the witness has not seen anyone else. Thereafter on another day, the accused has called the witness in to his house while she was with her friend Keneta. Without going in, the witness has ran away and told her Grand Mother Amelia.
9. The next witness was the Police officer who arrested and charged the accused, Eparama Delalovi. He has been in the service since 2004 and at the relevant time he was serving in the Nadi Police Station. On the information received he has arrested the accused and charged.
10. With leading of the above evidence prosecution closed their case and the Court was adjourned for lunch. When the Court resumed after the lunch break, the accused was present and defence moved to cross examine the 2<sup>nd</sup> witness, the *SL*. Having listened to the submissions made on behalf of the parties court permitted to recall the 2<sup>nd</sup> witness, the *SL* for the purpose of cross examination.
11. In cross-examination, the witness said that she is familiar with the layout of Motea's house and the first room as you enter from the front door is occupied by Motea and she runs a canteen there. The second room (out of three rooms) was occupied by the accused and the incident described of took place inside that room. While going to the toilet in Motea's house, she was called in by the accused. The accused was standing by

the door of his room when he called her and that place could be seen from outside the toilet. Further, the witness said that on that day Motea was not at home as her room was closed. The witness also said that the accused offered her 50 cents to buy mango skin (a sweet) and though he offered he did not give. In describing the incident the witness says that when she sat down on the mattress, which was laid on the floor, the accused was also sitting on it and the accused having parted her legs with his hands put his tongue into her <sup>vulva</sup> ~~valve~~ and licked it. *Q*

12. Thereafter the prosecution has closed their case marking the PE1. The Court being satisfied that the prosecution has adduced evidence to cover every ingredient of the offence, acting under the provisions of section 231(2) of the Criminal Procedure Decree explained the rights of the accused, giving him many options. He had those options because he does not have to prove anything. The burden of proving his guilt beyond reasonable doubt remains on the prosecution at all times.
  
13. The accused elected to give evidence on his behalf. In his evidence he stated that; In 2015 August, he visited one of his daughters, namely Motea, and stayed with her for about 2 weeks. Motea was living in Vitina and He knew SL as she was staying close to Motea's house and used to come to their house to play with Motea's children. Describing the layout of Motea's house the accused said as one enters from the front door, the first room he meets was occupied by the accused and the son of Motea, and the second was the girl's room and the third was occupied by Motea and her husband. The accused also confirms that Motea runs a canteen in her room. The accused refuses that he offered money to SL and totally denies any incident with SL. In cross examination the accused states that he has never been alone in Motea's house, and denies staying in Sailasa's house, at any time. Sailasa is the husband of Motea, his daughter and the son-in-law of his. Thereby he clearly contradicts his earlier stance of staying in Motea's house, even for a few weeks.

14. The assessors have found the evidence of prosecution as truthful and reliable, as they unanimously found the accused guilty to the counts of Rape. 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 were also highlighted with suitable cautions.
15. The three assessors have obviously rejected the denial of the accused on the count. It was a question of believing whom.
16. 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.
17. I am also satisfied that evidence of the prosecution presented through the complainant is sufficient to establish the elements of Rape, namely penetration of vulva. The prosecution also established the identity of the accused beyond a reasonable doubt.
18. In the circumstances, I convict the accused, Imanueli Senikuba to the count of Rape.
19. This is the Judgment of the Court.

  
Chamath S. Morais  
JUDGE



Solicitor for the Prosecution : Office of the Director of Public Prosecution, Labasa  
Solicitor for the Accused : Legal Aid Commission, Labasa