

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 83 OF 2015**

STATE

-v-

WILLIAM PETERS

Counsel : Mr S. Seruvatu for State

Ms K. Vulimainadave / T. Varinava for Accused

Date of Summing Up : 3 October 2018

Date of Judgment : 11 October 2018

(Name of the victim is suppressed. She is referred to as SM)

**JUDGMENT**

1. The Accused was charged on following information and tried before three assessors:

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) (3) of the Crimes Decree No. 44 of 2009

*Particulars of Offence*

**WILLIAM PETERS** on the 29<sup>th</sup> day of April, 2015, at Nadi in the Western Division, had carnal knowledge of **SM**, a child under the age of 13 years.

**SECOND COUNT**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (c) (3) of the Crimes Decree No. 44 of 2009

*Particulars of Offence*

**WILLIAM PETERS** on the 29<sup>th</sup> day of April, 2015, at Nadi in the Western Division, penetrated the mouth of **SM**, a child under the age of 13 years with his penis.

2. The assessors unanimously found the accused not guilty on each count.
3. I direct myself in accordance with my own Summing Up and review evidence led in trial. I am unable to agree with the opinion of assessors which is not available on the evidence led in trial. Having rejected the opinion of assessors, I pronounce my reasons as follows.
4. On the 1<sup>st</sup> count of rape the prosecution must prove beyond a reasonable doubt that the accused penetrated victim's vagina with his penis. To prove the 2<sup>nd</sup> count, the prosecution must prove beyond reasonable doubt that the accused penetrated victim's mouth with his penis.
5. The prosecution called three witnesses, the victim, her mother Ana and Dr. Vaniqi and substantially relied on the evidence of the child victim. Other witnesses were called to prove the consistency of the conduct of the victim.

6. The victim (SM) in her evidence said that when she was in the toilet, Willy pushed the door and came inside the toilet. She did try to shout, but Willy blocked her mouth and carried her and put his "palu" in her mouth, in her bum and in her "balei". When asked to point to 'balei', SM pointed to where her vagina is. When the clerk showed the diagram of a human body depicted in the medical report and asked her to point to where the "palu" is on that picture, she pointed to where the genital organ is located. SM further said that Willy, after putting his "palu" in her mouth, in her bum and in her "balei" told her not to tell this to anybody. She said that the incident happened in the night when her mother was washing clothes. She said that she relayed the incident to her mother.
  
7. The victim was 4 years old at the time of the offence and 7 years old when she gave evidence. The victim gave unsworn evidence when the court found that she was not mature enough to understand the nature of the oath. However she appears to have understood the obligation to tell the truth to court. I observed her demeanor and manner of giving evidence carefully when being examined and cross examined. I am certain that she told the truth. I have no reason to disbelieve her evidence.
  
8. The accused is victim's step sister. He had been living in the same house with the victim. The victim was 4 years old at the time of the offence. There was no apparent and credible reason for her to make up this serious allegation against her step brother.
  
9. Ana, (mother of the victim), said that when the victim was looking at herself in the mirror, she was playing with saliva from her mouth, putting saliva in and out of mouth, repeatedly doing the same thing. She had told the victim to stop doing that as it's a bad manner. At one point in time, the victim had put saliva out from her mouth and relayed the incident to her.
  
10. Ana then had sat down with the victim, given her a pen, and asked the victim to demonstrate as to how Willy did it to her. In her demonstration, the victim had put the pen right inside her mouth. The victim had told that Willy lifted her up and bent her over and inserted his "palu" inside her bum and also inserted it in

her "balei". When she inquired from the victim as to why she didn't shout to ask for help, the victim had told that she wanted to shout but Willy blocked her mouth.

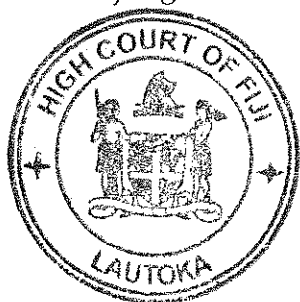
11. The version of the defence is that Ana made up this allegation because Ana wanted the accused and her mother out of her house after some disputes with accused's mother over food and utility bills.
12. However, there is no evidence that Ana had a dispute with accused's mother who is her own sister. Ana in her evidence denied that she had a dispute with her sister over food or utility bills. She explained why she recorded her statement with police a bit late. There is no material contradiction between her evidence and her previous statement to police. I observed Ana's demeanour to find her to be straightforward. I find Ana to be a credible and honest witness.
13. According to Ana, the alleged incident had occurred on the 29<sup>th</sup> of April 2015. The victim had relayed the incident to Ana on the 8<sup>th</sup> of May 2015. There was a delay of approximately 9 days in reporting the alleged incident to her mother. The report was lodged with police on the 10<sup>th</sup> of May 2015 and Ana had given her statement to police on the following day.
14. I have no problem in relying on Ana's evidence to find that the victim had made a recent complaint to her mother although the complaint was made by the victim 9 days after the alleged incident. There is a reasonable explanation for the delay. The victim said that her mouth was blocked by Willy when she wanted to shout and that she was warned not to tell the incident to anybody. Ana in her evidence confirmed that she received the same explanation from form the victim when the matter was eventually reported to her. The explanation that the victim was scared to complain of what had happened is acceptable.
15. The complaint had come naturally from the victim when she was asked to stop playing with her saliva. The victim denied that mango juice or sap had caused an itch and a rash in her mouth. Ana also rejected the proposition that the victim was allergic to mango. It appears that the victim had opened up with her story when her mother noticed her playing with saliva. Victim's conduct (playing with

saliva) is consistent with a bitter experience of an oral sex. Victim's story is consistent with her conduct. She had informed her mother Ana about the incident albeit a bit late.

16. The medical evidence is also consistent with victim's evidence about the allegation of penile penetration although it did not implicate the accused.
17. The victim was medically examined by Dr. Vaniqi about 10 days after the alleged incident. Doctor said that victim's hymen was not intact and the area around inner part of the vagina appeared red, but not bruised. Explaining her professional opinion, the doctor said that, in a 4 year old child, hymen usually is intact and it's unusual for the area around the vagina to be red. She said that redness could be from a penetration of the vagina when it is not lubricated well. Doctor's conclusion is that there was a possible sexual penetration. She had come to that conclusion on her dual specific medical findings; namely, the hymen was not intact and the area around the vagina was red, two common symptoms of a blunt force injury.
18. There is no other possible inference that can be drawn from the medical evidence than that of a penetration of victim's vagina with a blunt object.
19. Defence's argument is that a bicycle riding could have caused the injuries to victim's vagina. The doctor agreed that bicycle riding could cause hymen to be broken. However there is no evidence that 4 year old victim was riding bicycles during that period. The victim denied that she was riding a bicycle although there was an old bicycle in the house. Ana also denied having seen the victim riding a bicycle.
20. I believe that the victim was telling the truth when she said that Willy put his "palu" in her mouth, and in her 'balei'.
21. Children may not fully understand what it is that they are describing, and they may not have the words to describe the sexual organs in adult language. When

Ana received the complaint, she readily understood that the victim was referring to her vagina and Willy's penis when she said "Willy put his 'palu' in her mouth, and in her 'balei'". Those are the words the victim had used to describe genital organs in her language. The victim pointed to her vagina when she was asked to point to her 'belie'. She pointed to where male genital organ is located when she was shown a diagram of a man.

22. I am certain that the accused had penetrated victim's mouth and vagina with his penis. I am unable to agree with the opinion of assessors which I think was motivated by assessors' reluctance to send the young accused to prison. However I have to reject the opinion of assessors on the basis of evidence and my directions to the assessors in my Summing Up.
23. I reject the opinion of assessors which is not available on evidence led in trial. Prosecution proved both charges beyond reasonable doubt.
24. I find the accused guilty on each count and convict the accused accordingly.
25. That is the judgment of this court.



Aruna Aluthge

Judge

AT LAUTOKA

11<sup>th</sup> October, 2018

Solicitors: Office of the Director of Public Prosecution for State  
Legal Aid Commission for Defence