

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 17 of 2017

[CRIMINAL JURISDICTION]

STATE

V

- 1. PETERO MAWI**
- 2. SALAUCA VOLAUKILODONI**

Counsel : Ms. L. Bogitini and Ms. S. Shameem for the State
Mr. Qetaki and Ms. O. Grace for the 1st Accused
Mr. J. Daurewa for the 2nd Accused

Hearing on : 26 - 28 March 2019

Summing up on : 29 March 2019

Judgment on : 29 March 2019

[The complainant's name is suppressed. She will be referred to as "LL"]

JUDGMENT

1. The above named accused are charged with the following offences:

COUNT 1

Statement of Offence:

DEFILEMENT OF A YOUNG PERSON BETWEEN 13 AND 16 YEARS OF AGE: contrary to section 215 (1) of the Crimes Act 2009.

Particulars of Offence

PETERO MAWI between the 1st day of July, 2016 and the 31st day of July, 2016 at Lau, in the Southern Division, had unlawful carnal knowledge of LL, a young person above the age of 13 years and under the age of 16 years.

COUNT 2

Statement of Offence

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

Particulars of Offence

SALAUCA VOLAUKILODONI between the 1st day of July, 2016 to the 31st of July, 2016 at Lau, in the Southern Division, inserted his penis into the vagina of LL without her consent.

2. The assessors have returned with the unanimous opinion that each accused is guilty as charged.
3. I direct myself in accordance with the summing up delivered this afternoon and the evidence adduced during the trial.
4. The only witness for the prosecution was the complainant. The first accused gave evidence in his defence. The second accused gave evidence and called one witness.
5. I noted that there was a delay of about four months for this matter to be reported to the police. The complainant said that she informed one of her friends about the incident and two of her aunts. But they were not called as witnesses. It is not for this court to speculate what their evidence might have been. It was highlighted on behalf of the first accused that the complainant admitted that she told her friend about the two accused peeping from her window. Thereby he was suggesting that the complainant had given a different version to her friend the very next day and therefore she should not be believed. The admission made by the complainant that she told her friend that the two accused peeped into her room does not necessarily suggest that the complainant lied about her encounter with the two accused as recounted in court.
6. The complainant was 13 years old at the material time. She had lost her parents when she was around 5 years old. This incident of peeping she admitted telling

her friend may have been a different incident that may have taken place on another time. Or, the complainant may have simply fabricated this story about the accused peeping simply to relieve herself of the pressure of keeping her real encounter as a secret. The complainant may have told her friend about what exactly happened; or may not have told her; or may have told her a different story. In my view, what the complainant may have told her friend does not really matter as far as this court is convinced that the evidence given by the complainant in court is credible and reliable. In my judgment, the complainant was a credible and a reliable witness. The fact that she changed her allegation against the first accused from one of rape to having consensual sexual intercourse also does not change my view regarding her credibility. I accept her explanation that she was pressurized by her aunts to initially say that she did not consent for the first accused to have sexual intercourse with her.

7. Given the account the complainant gave in court regarding what took place between her and the first accused and the demeanour and deportment of the first accused when he gave evidence, I am unable to accept the first accused's version as credible and reliable.
8. With regard to the second accused, in his evidence, I noted that he tried to over emphasize about the month of July 2016. He said he started diving from July 2016, but his witness said that he was diving from January 2016. All in all, I found the evidence of the second accused and his witness with regard to the second accused's *alibi* to be unreliable.
9. Given that the complainant and the second accused are cousins; that the complainant and the second accused are known to each other; the fact that the complainant saw the second accused when he was walking to the first accused; the fact that there was a conversation with the complainant and the second accused before the incident, I am satisfied beyond reasonable doubt that the complainant had clearly identified the second accused and that this is not a case of mistaken identity.

10. The first accused's defence was total denial and he did not raise the defence that he had reasonable cause to believe, and did in fact believe, that the complainant was of or above the age of 16 years at the material time. Nevertheless, in view of the evidence that the complainant was related to the first accused's wife and his admission that he knew that the complainant was attending primary school I find no reason for him to have such mistaken belief. In view of the evidence of the complainant in relation to the first count, I find that the prosecution has proved all the elements of the offence of defilement beyond reasonable doubt.
11. In view of the evidence of the complainant in relation to the second count, I am satisfied beyond reasonable doubt that the second accused penetrated the complainant's vagina and he did this after having obtained the complainant's consent by threatening her. Therefore, the consent given by the complainant in relation to the incident involving the second accused was not freely and voluntarily given by her and the second accused knew that. Hence, I find that the prosecution has proved all the elements of the second count against the second accused beyond reasonable doubt.
12. In the circumstances, I agree with the unanimous opinion of the assessors. I find the first accused guilty of the first count and convict him as charged. I find the second accused guilty of the second count and convict him as charged.



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

Vincent S. Perera
JUDGE

Solicitors

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the 1st Accused
R. Vananalagi & Associates for the 2nd Accused