

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 34 of 2015**

**STATE**

**V**

**NIKOLA ROKOCIKA**

**Counsel** : Mr. S. Seruvatu with Ms. P. Lata for the State.  
: Ms. J. Singh with Mr. T. Varinava [LAC] for the  
Accused.

**Dates of Hearing** : 30 and 31 January, 2019  
**Closing Speeches** : 1 February, 2019  
**Date of Summing Up** : 1 February, 2019  
**Date of Judgment** : 4 February, 2019

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**JUDGMENT**

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*(The name of the complainant is suppressed she will be referred to as ("VR").*

1. The Director of Public Prosecutions charged the accused by filing the following information:

**COUNT ONE**

**REPRESENTATIVE COUNT**

*Statement of Offence*

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

### *Particulars of Offence*

**NIKOLA ROKOCIKA** between the 1<sup>st</sup> day of May, 2014 and the 31<sup>st</sup> day of August, 2014 at Nadi, in the Western Division, penetrated the vagina of “**VR**” with his penis, without her consent.

2. The two assessors (after one assessor was discharged by the court for absenteeism) returned with a unanimous opinion of guilty.
3. I adjourn to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called one witness the complainant and the defence called one witness after the accused exercised his right to remain silent.
5. The complainant was 14 years of age in 2014 she lived with her stepfather the accused, her mother and three step siblings. The complainant recalled three Saturdays between 1<sup>st</sup> May, 2014 and 31<sup>st</sup> August, 2014.
6. On the first occasion the complainant was at home with the accused after lunch she went to wash the dishes after which she went to rest in the bedroom.
7. As she was reading the holy Bible the accused came into the bedroom and locked the door. The accused then removed the complainant’s yellow skirt and panty with one hand and with the other he removed his pants. The complainant tried to push the accused away, however, the accused inserted his penis on her vagina at this time the complainant felt pain. The complainant also felt wetness in her vagina. The accused then left the bedroom.

8. After the accused left the bedroom the complainant saw blood stains on the mat and her clothes, the blood came out of her vagina. The complainant further stated that she did not consent the accused to have sexual intercourse with her.
9. In the afternoon the complainant told her mother about what the accused had done to her.
10. On the second occasion again on a Saturday the complainant's mother had gone to catch mussels from the river, she was at home with the accused and her 4 year old step sister. The complainant was in the bedroom trying to make her step sister sleep. The accused came into the room removed her skirt and panty and inserted his penis into her vagina, she felt the accused penis in her vagina.
11. The complainant could not push the accused since he was strong she did not consent the accused to do what he had done. The accused told the complainant not to tell anyone otherwise he will beat her but she told her mother about what the accused had done to her. Her mother told her not to lie and not to be cheeky.
12. Every Saturday the complainant's mother would not be at home and she would be left with the accused and her 4 year old step sister.
13. On the third occasion on a Saturday the complainant was making her step father and mother's bed when the accused came inside the room and locked the door she tried to leave the room but couldn't since the accused had the key. The accused made her lie on the bed removed her clothes and his  $\frac{3}{4}$  pants and inserted his penis into her vagina. It was painful and she did not agree to have sexual intercourse with the accused. In the afternoon the complainant told her mother about what the accused had done to her, her mother beat her with a hose pipe.

14. As a result of what the accused had been doing the complainant got pregnant.
15. The accused exercised his right to silence but called one witness namely his wife Adi Laite Tuirewa the mother of the complainant.
16. Adi informed the court that she has been married to the accused for the past 15 years she has 3 children from her marriage.
17. In 2014 the complainant got pregnant when she asked the complainant whether the accused was the father of the child the complainant said no.
18. The witness also stated that the complainant did not tell her at any time about the accused having sexual intercourse with her or show any blood stains. The witness denied assaulting the complainant with a hose pipe or beating her at all.
19. In cross examination by State Counsel the witness agreed she cared about the accused and that she was financially and emotionally dependent on the accused for support. The witness agreed that she told the complainant to tell the Hospital the name of one Peni to be the father of her child.
20. The witness denied on 18 February, 2015 the accused had told her not to tell his name to the police for impregnating the complainant.
21. The witness also denied the accused had told her to take Peni's name for raping her. The witness was referred to her police statement dated 22 February, 2015 in particular to the 2<sup>nd</sup> last paragraph which was read as:

*“On 18<sup>th</sup> February, 2015 the police came home and took [VR] and I to the station but before that Nikola took [VR] and I to the bedroom and told us not to take his name to the police station for him impregnating [VR] and say a*

*boy by the name Peni raped her. I suspected that Nikola did something to [VR] so I asked [VR] at Nadi Police Station if Nikola raped her and she said yes.”*

22. The witness denied giving the above statement to the police but agreed signing the statement. Upon further questioning the witness said the police statement was not read back to her.
23. The witness denied she knew from the beginning that the accused had raped the complainant and that she did not report the matter to the police. The witness maintained the complainant did not tell her that the accused had raped her and also that she did not beat the complainant with a hose pipe.
24. The witness agreed she had asked the complainant whether the accused might have done something to her since she was suspicious because he was her stepfather. Furthermore, the witness stated that she was not trying to protect the accused since the complainant was her daughter but what the complainant had done was that she had lied to the witness and was dishonest with her but at no point in time she had asked the complainant if the accused had raped her.
25. After a careful consideration of the evidence adduced by the prosecution and the defence I accept the evidence of the complainant as truthful and reliable. I have no doubt in my mind that the complainant told the truth in court her demeanour was consistent with her honesty.
26. The complainant was able to withstand cross examination and was not discredited. Although in cross examination the complainant was referred to her police statement given to the police when facts were fresh in her mind, the inconsistency was not significant which did not adversely affect the credibility and reliability of the complainant's evidence. The complainant was also forthright in cross examination as well.

27. On the other hand the defence witness did not tell the truth her evidence was unreliable. I do not accept the witness was not told by the complainant about the accused raping her on three occasions and also impregnating her. It was apparent from the evidence of this witness that she was blaming the complainant for everything the accused was doing to her. I also accept that the complainant was assaulted by the witness. I also reject the evidence of the witness that she had asked the complainant whether the accused was the father of her child and that the complainant had said no.
28. It was also obvious to me from the demeanour/evidence of this witness that she was protecting the accused. I accept she told the truth to the police when she gave her police statement wherein she told the police that the accused had told the complainant and the witness before they went to the Police Station not to tell the police that he had impregnated the complainant and also to lie that one Peni had raped the complainant. Furthermore, the witness suspected the accused of raping the complainant so at Nadi Police Station the witness asked the complainant if the accused had raped her to which the complainant had said yes.
29. I reject the assertion by this witness that she did not give such a statement to the police and that the statement was not read back to her.
30. The defence has not been able to create any reasonable doubt in the prosecution case.
31. This court is satisfied beyond reasonable doubt that between the 1<sup>st</sup> day of May, 2014 and the 31<sup>st</sup> August, 2014 the accused had penetrated the vagina of the complainant with his penis without her consent.
32. This court is also satisfied that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.

33. I agree with the unanimous opinion of the assessors that the accused is guilty of the offence of rape.
34. In view of the above, I find the accused guilty as charged and I convict him accordingly.
35. This is the judgment of the court.



**Sunil Sharma**  
**Judge**

**At Lautoka**  
**4 February, 2019**

**Solicitors**

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