

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

Criminal Case No.: HAC 17 of 2018

BETWEEN : STATE

AND : KAONDIDO TUTARA

Counsel : Ms. D. Rao for the State
Ms M. Tuiloma and Ms K. Boseiwaqa for the Accused

Dates of Hearing : 13 - 15 May 2019

Date of Summing Up: 17 May 2019

Date of Judgment : 20 May 2019

JUDGMENT

[1] The Accused is charged with four representative counts of rape involving the same complainant. Count 1 alleges that the Accused raped the complainant between May and August 2017 at Vunimoli, Labasa. Count 2 alleges that the Accused raped the complainant in October 2017 at Korotari, Labasa. Count 3 alleges that the Accused raped the complainant in December 2017 at Vunimoli, Labasa. Count 4 alleges that the Accused raped the complainant between January and February 2018 at Waidamudamu, Labasa.

[2] After deliberating for thirty minutes, the assessors expressed the following opinions:

Assessor 1

Guilty of rape as charged on counts 1, 2 and 4.

Not guilty of rape as charged on count 3 but guilty of the alternative offence of defilement.

Assessor 2

Guilty of rape as charged on counts 1, 2 and 4.

Not guilty of rape as charged on count 3 but guilty of the alternative offence of defilement.

Assessor 3

Guilty of rape as charged on counts 1, 2, 3 and 4.

- [3] The physical element of sexual intercourse is not in dispute. On each count, I feel sure that the Accused had sexual intercourse with the complainant. The defence case is that the Accused had consensual sexual intercourse on all the alleged occasions. The issues for determination are whether the complainant did not consent to sexual intercourse and whether the Accused knew the complainant did not consent.
- [4] The complainant is a 15-year old child. The Accused is an adult male (48 years old). Both the complainant and the Accused are from the Banaban community. The Accused is the complainant's maternal uncle. At the material times, he was also her guardian. The incidents occurred when she came from Rabi to live with the Accused and his family for schooling in Labasa after her father's death.
- [5'] The complainant in her evidence said that on all occasions the Accused approached her for sex. She expressly said no to him but he did not listen. She explained she did not resist or raise alarm because she feared of being not believed by her family. She explained she did not report immediately after the incidents because of the fear of the repercussions of reporting. She said in her evidence that the Accused threatened to assault her and chase her away from his home if she reported the abuse. She kept quiet until she confided in a school friend. Her school friend gave evidence of the complaint.

- [6] The complainant struck me as a credible witness. Her explanation for not resisting or raising alarm or reporting is reasonable in the circumstances of this case. On each count, I feel sure that the child complainant did not consent to sexual intercourse and the Accused knew she did not consent.
- [7] The prosecution has discharged the burden to prove all four counts of rape beyond reasonable doubt. The Accused is convicted of rape as charged on all four counts.
- [8] The Court will now hear mitigation before pronouncing sentence.



A handwritten signature in blue ink, consisting of the initials "DG" followed by a long horizontal stroke.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused