

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 291 of 2017

STATE

V

RATU RAVUAMA VUNIVALU VUIBAU

Counsel : Ms. Moira Konrote with Ms. Unaisi Tamanikaiyaroi for the State
Mr. Sitiveni Raikanikoda for the Accused

Dates of Trial : 5-7 & 10-13 June 2019

Summing Up : 14 June 2019

Judgment : 17 June 2019

The names of all six complainants are suppressed. Accordingly, the six complainants will be referred to respectively as follows: Complainant in Counts 1 and 2 "NN", Complainant in Count 3 "TK", Complainant in Count 4 "LV", Complainant in Count 5 "MC", Complainant in Count 6 "PT" and Complainant in Count 7 "AK".

JUDGMENT

[1] As per the Amended Information, filed by the Director of Public Prosecutions (DPP), the accused Ratu Ravuama Vunivalu Vuibau is charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 29th day of June 2017, at Nakorosule, Naitasiri, in the Eastern Division, inserted his finger into the vagina of **NN**, without her consent.

COUNT 2

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 29th day of June 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **NN**, by sucking her breasts.

COUNT 3

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 11th day of August 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **TK**, by pinching her buttocks with his hands.

COUNT 4

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 8th day of September 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **LV**, by fondling her breasts with his hands.

COUNT 5

(Representative Count)

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, between 1st of May 2017 to the 30th of September 2017, at Nakorosule, Naitasiri, in the Eastern Division, unlawfully and indecently assaulted **MC**, by fondling her breasts with his hands.

COUNT 6

(Representative Count)

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: Contrary to Section 213 (1) (b) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, between the month of May 2017, and the month of August 2017, at Nakorosule, Naitasiri, intruded upon the privacy of **PT**, by hugging the said **PT** from behind, which offended her modesty.

COUNT 7

Statement of Offence

INDECENTLY ANNOYING ANY PERSON: Contrary to Section 213 (1) (b) of the Crimes Act 2009.

Particulars of Offence

RATU RAVUAMA VUNIVALU VUIBAU, on the 12th day of September 2017, at Nakorosule, Naitasiri, intruded upon the privacy of **AK**, by hugging the said **AK** from behind, which offended her modesty.

- [2] The accused pleaded not guilty to the charges and the ensuing trial was held over 7 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of all 7 charges.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] As can be observed, the accused has been charged with one count of Rape, one count of Sexual Assault, three counts of Indecent Assault and two counts of Indecently Annoying Any Person.
- [6] During my summing up I explained to the Assessors the salient provisions of Section 207 (1) and (2) (b) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [7] The Assessors were directed that in order for the prosecution to prove the first count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 29 June 2017);
 - (iii) At Nakorosule, Naitasiri, in the Eastern Division;
 - (iv) Penetrated the vagina of NN with his finger;
 - (v) Without the consent of the complainant NN; and
 - (vi) The accused knew or believed that the complainant NN was not consenting, or the accused was reckless as to whether or not she was consenting.
- [8] The above individual elements were further elaborated upon in my summing up.
- [9] The second count against the accused is a count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Accordingly, during my summing up I explained to the Assessors the salient provisions of Section 210 (1) (a) of the Crimes Act.
- [10] The Assessors were directed that in order for the prosecution to prove the second count of Sexual Assault, they must establish beyond any reasonable doubt that;
- (i) The accused;

- (ii) On the specified day (in this case the 29 June 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted NN, by sucking her breasts.

[11] The above individual elements were further elaborated upon in my summing up.

[12] The third, fourth and fifth counts against the accused are charges of Indecent Assault, Contrary to Section 212 (1) of the Crimes Act. Accordingly, during my summing up I explained to the Assessors the relevant provisions of Section 212 (1) of the Crimes Act.

[13] Therefore, the Assessors were directed that in order for the prosecution to prove the third count of Indecent Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 11 August 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted TK, the complainant, by pinching her buttocks with his hands.

[14] Similarly, in order for the prosecution to prove the fourth count of Indecent Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 8 September 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted LV, the complainant, by fondling her breasts with his hands.

[15] Similarly, in order for the prosecution to prove the fifth count of Indecent Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between 1 May 2017 and 30 September 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted MC, the complainant, by fondling her breasts with his hands.

[16] Each of these individual elements were explained together in respect of counts three, four and five.

[17] The sixth and seven counts against the accused are charges of Indecently Annoying Any Person, Contrary to Section 213 (1) (b) of the Crimes Act.

[18] During my summing up I explained to the Assessors the salient provisions of Section 213 of the Crimes Act, which deals with the offence of Indecently Annoying Any Person.

[19] Accordingly, I explained to the Assessors, that in order for the prosecution to prove the sixth count of Indecently Annoying Any Person, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between the months of May 2017 and August 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Intruded upon the privacy of the complainant, PT, by hugging the said PT from behind, with the intention of insulting her modesty.

[20] Similarly, in order for the prosecution to prove the seventh count of Indecently Annoying Any Person, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 12 September 2017);
- (iii) At Nakorosule, Naitasiri, in the Eastern Division;
- (iv) Intruded upon the privacy of the complainant, AK, by hugging the said AK from behind, with the intention of insulting her modesty.

[21] Each of these individual elements were further explained together in respect of counts six and seven.

[22] The prosecution, in support of their case, called the six complainants, NN, TK, LV, MC, PT and AK, and also a school teacher, Rejeli Seru. The prosecution also tendered the following document as a prosecution exhibit:

Prosecution Exhibit **PE1**- Birth Certificate of the complainant NN.

[23] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), the prosecution and the defence have consented to treat

the following facts as *“Admitted Facts”* without placing necessary evidence to prove them:

1. Ratu Ravuama Vunivalu Vuibau is the accused in this case.
2. The accused was 41 years old at time of the alleged incident.
3. The accused was the Head Teacher at Nakorosule District School during the time of the alleged incidents.
4. The accused was residing at Nakorosule Village, Naitasiri at the time of the alleged incidents.
5. One of the complainants in this case is NN, 14 years old student of Nakorosule District School.
6. One of the complainants in this case is TK, 13 years old student of Nakorosule District School.
7. One of the complainants in this case is LV, 12 years old student of Nakorosule District School.
8. One of the complainants in this case is MC, 13 years old student of Nakorosule District School.
9. One of the complainants in this case is PT, 12 years old student of Nakorosule District School.
10. One of the complainants in this case is AK, 13 years old student of Nakorosule District School.
11. The complainants in this matter were all residing at Nakorosule Village, at the time of the alleged incidents.
12. The complainant NN was medically examined on the 15th of September 2017, by Dr. Salome.
13. Raijeli Seru is also a school teacher at Nakorosule District School.

[24] Since the prosecution and the defence have consented to treat the above facts as *“Admitted Facts”*, without placing necessary evidence to prove them, these facts are considered as proved beyond reasonable doubt.

[25] The accused is totally denying the allegations of Rape and Sexual Assault (Counts 1 and 2). He takes up the position that the said allegations have been framed against him.

- [26]** With regard to the allegations in Counts 3-7, the accused takes up the defence that the respective complainants consented to those acts. The accused also takes up the position that the said allegations have been framed against him. The said complainants have denied that they consented to the said acts or that the said allegations were framed against the accused.
- [27]** However, in terms of Section 212 (2) of the Crimes Act it is stated that it is no defence to a charge for an Indecent Assault on a boy or girl under the age of 16 years to prove that he or she consented to the act of indecency.
- [28]** The Assessors have found the evidence of prosecution as truthful and reliable, as they have by a unanimous decision found the accused guilty of all the charges. Therefore, it is clear that they have rejected the version put forward by the accused.
- [29]** In my view, the Assessor's opinion was justified in respect of all the charges. It was open for the Assessors to unanimously find the accused guilty on the available evidence. I concur with the unanimous opinion of the Assessors in respect of those charges.
- [30]** Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences set out in counts 1-7 with which the accused is charged.
- [31]** In the circumstances, I find the accused, Ratu Ravuama Vunivalu Vuibau, guilty of the charges of Rape (Count 1), Sexual Assault (Count 2), Indecent Assault (Counts 3-5) and Indecently Annoying Any Person (Counts 6 and 7).
- [32]** Accordingly, I convict the accused, Ratu Ravuama Vunivalu Vuibau, for the offences of Rape (Count 1), Sexual Assault (Count 2), Indecent Assault (Counts 3-5) and Indecently Annoying Any Person (Counts 6 and 7), as charged.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 17th Day of June 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Raikanikoda & Associates, Suva.**