

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

**Criminal Case No.: HAC 196 of 2015**

**STATE**

**V**

**LAISIASA KURINAQAU**

**Counsel** : Ms. R. Uce for the State.  
: Ms. E. Radrole with Ms. S. Ali for the Accused.

**Dates of Hearing** : 03 and 04 July, 2019  
**Closing Speeches** : 08 July, 2019  
**Date of Summing Up** : 08 July, 2019  
**Date of Judgment** : 09 July, 2019

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**JUDGMENT**

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*(The name of the complainant is suppressed she will be referred to as “KL”).*

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

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**LAISIASA KURINAQAU**, on the 13<sup>th</sup> of November, 2015, at Sigatoka in the Western Division penetrated the vagina of “**KL**” an 8 year old child with his penis.

**COUNT TWO**

**REPRESENTATIVE COUNT**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act No. 44 of 2009.

*Particulars of Offence*

**LAISIASA KURINAQAU**, between the 1<sup>st</sup> day of September and the 13<sup>th</sup> day of November, 2015, at Sigatoka in the Western Division penetrated the vagina of “**KL**” an 8 year old child with his tongue.

**COUNT THREE**

**REPRESENTATIVE COUNT**

*Statement of Offence*

**INDECENT ASSAULT**: Contrary to section 212 (1) of the Crimes Act No. 44 of 2009.

*Particulars of Offence*

**LAISIASA KURINAQAU**, between the 1<sup>st</sup> day of September and the 13<sup>th</sup> of November, 2015, at Sigatoka in the Western Division unlawfully and indecently assaulted “**KL**” an 8 year old child by touching her vagina.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of one count of rape, one representative count of rape and one representative count of indecent assault as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.

4. The prosecution called four (4) witnesses and the accused exercised his right to silence and did not call any witness.
5. The complainant, who was 8 years of age in 2015 (now 12 years) informed the court that on a Friday in 2015 she was playing with her friends, namely Totovo, Josh and Milika at Totovo's house. The complainant knows the accused as Tai Hahau who showed her a \$5 note.
6. The complainant refused to accept the money and then joined her friends to play, at this time the accused came and grabbed her and took her to his house. When inside the house the accused did bad things to her. The accused cello taped her mouth and then tied her hands with a rope. The accused then removed the complainant's clothes, namely her skirt, top, tights and panty and inserted his private part to her private part and also started to touch her private part.
7. The complainant does not know the name of the accused private part, but said it was located in front she pointed to her vagina as her private part. As a result of what the accused did to her she was scared, felt lonely and started feeling pain, both were lying on the floor at the time.
8. Afterwards, the accused dressed her, removed the cello tape from her mouth and the rope from her hands opened the door and let her go. The complainant went home and did not tell anyone about what had happened because the accused told her if she told anyone he will do it again.
9. Thereafter, on a Monday the accused had sucked the complainant's private part in his house. She was playing with her friends, namely Joey, Bola and Totovo when the accused showed her a \$10 note. The complainant refused to accept the same.
10. The complainant ran away from the accused, but he was able to grab her and took her to his house. Inside his house the accused placed a cello tape

on her mouth and sucked her private part and touched her whole body, at this time she was not wearing her clothes. After a while her friend Totovo knocked on the door and the accused opened the door. Upon seeing Totovo the complainant told Totovo to tell her grandmother that she was at the house of the accused.

11. In November, 2015 the accused had sucked her private part and had touched her private part for three days.
13. The second witness was Reapi Totovo on 13<sup>th</sup> November, 2015 she was playing with her friends, Josh and the complainant at her house when her father gave Josh a \$1.00 coin. Shortly after, all went to the shop to buy ice block unfortunately, the money was not enough to buy the complainant's ice block.
14. The complainant saw the accused sitting at his house so she went to him to ask for some money. When the complainant did not come back for a while, the witness went to look for the complainant. When she arrived at the house of the accused she went to the window, but could not see anything so she went to the door.
15. From the door, the witness saw the complainant's mouth and hands were cello taped and her dress was pulled up to her chest. The accused was kneeling down beside the complainant and doing something bad to her and was about to lie on her. The accused moved his face towards the witness so she ran away. The door was open, both the complainant and the accused were lying on the floor.
16. Dr. Romika Lata on 17<sup>th</sup> November, 2015 had examined the complainant at the Sigatoka Hospital. The specific medical findings of the doctor were:

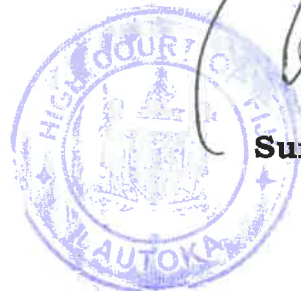
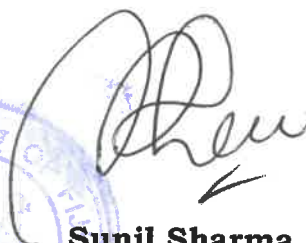
- (a) Vaginal Examination – ½ cm long laceration noted at 3 o'clock at the right side of the vagina;
  - (b) Hymen not visible;
  - (c) No active bleeding.
19. The professional opinion of the doctor was that the injuries sustained were recent that is fresh but she could not say how long ago it was sustained. The doctor stated the injuries could have been caused by the penetration of the vagina by a penis.
21. The final prosecution witness DC Viliame Uqeuge on 19<sup>th</sup> November, 2015 had interviewed the accused at the police bure of Sigatoka Police Station. The interview was conducted in the iTaukei language since the accused who was educated up to year 5 wanted to be interviewed in this language. The interview was conducted for two days.
22. The witness had given all the rights to the accused during the caution interview. The accused was cooperative and well before the commencement of the interview and he did not make any complaints before, during and after the conclusion of the interview. However, the accused had told the witness about his chest and back pain, but when the witness wanted to take the accused to the hospital the accused had stated that he did not have any pain at that time.
23. There was no inducement or promise or intimidation or threat or assault on the accused to make a statement, he was treated well. During the interview sufficient breaks were also given to the accused.
25. At the conclusion of the caution interview, it was read to the accused and he was given the opportunity to add or correct anything.
26. On the other hand, the defence raised by the accused is of denial, he took the position that he did not do anything as alleged. Furthermore, the

accused submitted his confession be disregarded since it was not given by him voluntarily, an iTaukei police officer had intervened during his caution interview and had threatened him to admit everything.

27. As a result of fear and threat the accused admitted to everything in his interview he also states considering his level of education he was not properly explained his right to remain silent. He was suffering from chest and back pain before the commencement of the interview which he had informed the police officer yet he was not taken to the hospital for medical attention.
28. After considering the evidence adduced, I accept the evidence of all the prosecution witnesses 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. The complainant gave a coherent and honest account of what the accused had done to her she was also able to withstand cross examination and was not discredited. The complainant was not evasive and was forthright in her answers.
29. Considering the age of the complainant she was not expected to give precise details about the dates of the alleged acts of the accused whatever the complainant told the court was material evidence in respect of what the accused had done to her. This court accepts the complainant was threatened by the accused not to tell anybody about what he was doing to her.
30. Reapi Totovo also gave a truthful account of what she saw from the door of the accused house. I also have no doubt in my mind that this witness was also credible and her evidence can be relied upon. There were some inconsistencies between the evidence of the complainant and Reapi but it was not significant to adversely affect the reliability of the complainant's evidence.

31. I also accept the professional opinion of Dr. Lata that she saw recent injuries sustained by the complainant and upon vaginal examination she saw a ½ cm long laceration and also the hymen was not visible.
32. Finally, I accept the evidence of the interviewing police officer as truthful as well he had properly conducted the interview of accused and that the accused was under no threat or fear by this officer or any other police officer. I also accept the accused had given the answers in the caution interview voluntarily without any inducement, promise, intimidation, threat or assault to make a statement.
33. I reject the assertion by the defence that since the accused was educated up to Year 5 he was not able to understand his right to silence and that he was not taken to the hospital for his chest and back pain. The answers in the caution interview were given by the accused and were the truth.
34. A perusal of the caution interview shows that the questions asked were simple and the answers given by the accused were consistent and logical which does not give any indication that it was obtained unfairly as a result of the accused education
35. This court is satisfied beyond reasonable doubt that the answers given in the caution interview were given by the accused and they were the truth. I reject the defence suggestion that the answers were obtained by the police as a result of threat and fear. I also accept the accused was given all his rights and he understood them including his right to remain silent. This court also rejects the assertion by the accused that he was not taken to the hospital after he had informed the interviewing officer that he had chest and back pain.
36. The defence raised is implausible and untenable considering the totality of the evidence. The defence has not been able to create a reasonable doubt in the prosecution case.

37. I am satisfied beyond reasonable doubt that the accused on the 13<sup>th</sup> of November, 2015 had penetrated the vagina of the complainant a child under 13 years with his penis.
38. I am satisfied beyond reasonable doubt that between the 1<sup>st</sup> day of September, 2015 and the 13<sup>th</sup> day of November, 2015 the accused had penetrated the vagina of the complainant a child under 13 years with his tongue.
39. Finally, I am also satisfied beyond reasonable doubt that between the 1<sup>st</sup> day of September, 2015 and the 13<sup>th</sup> day of November, 2015 the accused had unlawfully and indecently assaulted the complainant by touching her vagina.
40. I agree with the unanimous opinion of the assessors that the accused is guilty of all the three counts that he is charged with.
41. In view of the above, I find the accused guilty as charged and I convict him accordingly.
42. This is the judgment of the court.



**Sunil Sharma**  
**Judge**

**At Lautoka**

09 July, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**