

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

**Criminal Case No.: HAC 107 of 2016**

**STATE**

**V**

**SEMESA SACERE**

**Counsel** : Mr. S. Babitu for the State.  
: Ms. E. Radrole for the Accused.

**Dates of Hearing** : 05 and 06 August, 2019  
**Closing Speeches** : 07 August, 2019  
**Date of Summing Up** : 07 August, 2019  
**Date of Judgment** : 08 August, 2019

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**JUDGMENT**

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

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*

**SEMESA SACERE**, between the 1<sup>st</sup> day of January, 2012 and 31<sup>st</sup> day of December, 2012 at Sigatoka in the Western Division, penetrated the vagina of “**MN**” with his penis without her consent.

**COUNT TWO**

*Statement of Offence*

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

*Particulars of Offence*

**SEMESA SACERE**, on the 8<sup>th</sup> of March, 2015 at Sigatoka in the Western Division, unlawfully and indecently assaulted “**MN**” by kissing her stomach.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of one representative count of rape and unanimously not guilty of one count of indecent assault.
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 two witnesses and the accused exercised his right to remain silent and did not call any witness.
5. The complainant who was 16 years of age in 2012 informed the court that on 3<sup>rd</sup> May, 2012 she was alone at home when the accused who was her maternal grandfather came and asked for her grandparents. The complainant told the accused that she was alone and that her grandfather was at the farm. Upon hearing this, the accused said “*just lock the door I want to give you some money*” the accused showed her some money and told her to take off her clothes.

6. The accused said he wanted to touch her body so he told her to lie down and then started touching, and kissing her. After a while the accused went over the complainant and penetrated her vagina with his penis. It was painful to the complainant, the accused had sexual intercourse with her for about half an hour. The complainant told the accused not to do this to her since it was painful. The accused responded by saying "*you don't want money*" and he continued.
7. The complainant did not consent to the accused to penetrate her vagina. The accused had sexual intercourse with the complainant on three occasions in 2012. On all occasions the complainant had told the accused not to do it since it was painful but the accused did not listen. He kept forcing her, and he scared her by his words. The complainant did not consent to what the accused was doing to her on all three occasions.
8. According to the complainant if she did not have sexual intercourse with the accused, he may beat her, force her and not give her money, and also the complainant was frightened of the accused who would give her \$3.00 or \$4.00 after he had sexual intercourse with her.
9. The accused would tell her not to tell anyone about what he had done to her as a result she did not tell anyone. In the year 2015, the complainant told her mother about what the accused had done to her she also said in 2015 the accused did not do anything to her. Furthermore, the accused was a regular visitor to her home.
10. The reason why the complainant delayed informing her mother was because when she met the accused he kept on telling her not to tell anyone about what he had done to her.
11. Furthermore, in 2015 her mother was at home when her mother saw the accused in her bedroom. Her mother was so surprised to see the accused so

she called him and asked him to sit down and also called the complainant and her grandfather. Her mother then questioned the accused why he was in the bedroom with the complainant her mother said she will report the matter to the police. At this time, the complainant told her what the accused had done to her.

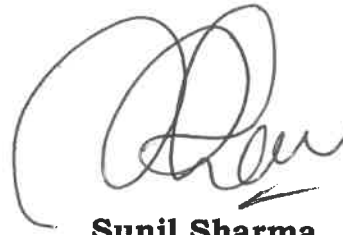
12. On this day the accused had entered her house while she was in her bedroom and the other family members were in the kitchen. It was after her bath the complainant had gone into her bedroom to change. The accused came and told the complainant not to wear anything and to lie down and then he started touching and kissing her the complainant started to cry.
13. The final prosecution witness was the mother of the complainant Suliana Saumia the complainant is her eldest daughter born on 23<sup>rd</sup> October, 1996. On 8<sup>th</sup> March, 2015 the witness was at her uncle's house where the complainant used to live. At about 6pm before the witness had her dinner she saw the accused lying in the house after a while when she looked around she did not see the accused.
14. At this time she heard the complainant's voice coming from the bedroom the witness went to see what was happening when she entered the bedroom she saw the complainant lying down and the accused kissing the complainant's stomach. The witness was really upset by what she saw, the accused got a shock and he started apologizing to her for what he had done.
15. When the complainant was lying down her t-shirt was lifted up she noticed the complainant was afraid. The witness asked the accused to come into the living room so that she could question him about the degrading act he had done to her daughter. When she spoke to the accused she noticed the accused was ashamed. The accused sought forgiveness from the witness after she informed him that she will report the matter to the police.

16. When the witness asked the complainant if this incident had happened previously, the complainant told her that the accused usually touched her breast and even had sexual intercourse with her. The accused would come during day time or night time and have sexual intercourse with the complainant. When these incidents were happening the witness was not living with the complainant.
17. At this time the witness went and reported the matter to the police. After this incident the witness noticed that the complainant forgot things, she would sit and stare she also failed her form 6 examination since her performance at school had been affected.
18. On the other hand the defence position was that the accused did not commit the offences as alleged by the complainant. The defence submitted that the accused and the complainant were in a sexual relationship that is the reason why the complainant did not tell anyone until 2015 when the complainant's mother questioned the complainant about her relationship with the accused.
19. The complainant had consented to have sexual intercourse with the accused on all the occasions. In respect of the second count of indecent assault the defence says this incident did not happen since the complainant did not say the accused had done anything to her in 2015. The defence further submits the mother of the complainant should not be believed since her evidence was inconsistent with her police statement which she had given to the police when the facts were fresh in her mind.
20. I accept the evidence of the complainant as truthful and reliable. The complainant was able to narrate to court what the accused had done to her over a period of time. I also accept that the complainant was afraid of the accused due to his repeated threats. These threats stopped her from making any complaints to anyone.

21. I have no doubt in my mind that the complainant told the truth in court, her demeanour was consistent with her honesty. Furthermore, the complainant was able to withstand lengthy cross examination and was not discredited she was forthright and not evasive.
22. The complainant was also honest in telling the court that the accused did not do anything to her in 2015 that is in respect of the count of indecent assault. This court also accepts that the complainant told her mother what the accused was doing to her.
23. Moreover a 16 year old having the attributes of the complainant cannot be expected to tell her mother all the details of her forceful sexual encounter with her grandfather. However, she did disclose material and relevant information about the unlawful sexual conduct of the accused to her mother which was that the accused was having sexual intercourse with her (*see Anand Abhay Raj v State, CAV 0003 of 2014*). The evidence of the Suliana Saumia was also credible and believable in respect of what the complainant had told her.
24. Even though the complainant did not tell her mother anything about what the accused was doing to her until her mother questioned her does not in my judgment create any doubt on the reliability of the complainant's evidence.
25. In respect of the evidence of the complainant's mother in my judgment she did not tell the whole truth in court in particular I have my doubts if this witness had observed anything on 8<sup>th</sup> March, 2015 as she had told the court.
26. This witness had lost her credibility under cross examination I accept that that she told the truth to the police officer who was writing her police statement. This witness was discredited to the extent that her evidence was unreliable.

27. In any event the evidence of this witness does not affect the evidence of the complainant. The complainant did tell the witness about the unlawful sexual conduct of the accused which prompted this witness to report the matter to the police.
28. The defence has not been able to create any reasonable doubt in the prosecution case in respect of the representative count of rape.
29. I am satisfied beyond reasonable doubt that the accused between the 1<sup>st</sup> day of January, 2012 and 31<sup>st</sup> of December 2012 penetrated the vagina of the complainant without her consent.
30. I also accept that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
31. In respect of the count of indecent assault this court accepts that the accused did not do anything to the complainant on 8<sup>th</sup> March, 2015. The prosecution has therefore not been able to prove beyond reasonable doubt that the accused on 8<sup>th</sup> March, 2015 had unlawfully and indecently assaulted the complainant by kissing her stomach.
32. For the above reasons, I agree with the unanimous opinion of the assessors that the accused is guilty of one representative count of rape and I also accept the unanimous opinion of the assessors that the accused is not guilty of one count of indecent assault.
33. In view of the above, I find the accused guilty of count one and I convict him accordingly in respect of count two, I acquit the accused.

34. This is the judgment of the court.



**Sunil Sharma**  
**Judge**



**At Lautoka**  
08 August, 2019

**Solicitors**

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

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