

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 14 OF 2017**

**BETWEEN** : **STATE**

**AND** : **LEVENI WAQA**

*Counsel* : *Ms. L. Latu with Mr. A. Kumar for the State*  
*Ms. A. Bilivalu for the Accused*

*Hearing on* : *12<sup>th</sup> – 13<sup>th</sup> of October 2020*

*Summing up on* : *15<sup>th</sup> of October 2020*

*Judgment on* : *21<sup>st</sup> of October 2020*

## **JUDGMENT**

1. The accused, Leveni Waqa is charged with a count of Sexual Assault and four counts of Rape, alleged as detailed below to have committed on Marica Ranadi who is his biological daughter.
2. The details of the offences that he was charged by the Director of Public Prosecutions are as follows;

### **COUNT 1**

#### ***Statement of Offence***

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

***Particulars of Offence***

Leveni Waqa, on the 31<sup>st</sup> of May 2014 at Ba, in the Western Division, unlawfully and indecently assaulted Marica Ranadi.

**COUNT 2**

***Statement of Offence***

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

***Particulars of Offence***

Leveni Waqa, on the 06<sup>th</sup> June, 2014 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

**COUNT 3**

***Statement of Offence***

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

***Particulars of Offence***

Leveni Waqa, on the 14<sup>th</sup> day of August 2014 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

**COUNT 4**

**(Representative Count)**

***Statement of Offence***

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

***Particulars of Offence***

Leveni Waqa, between the 01<sup>st</sup> day of July 2015 and the 7<sup>th</sup> day of September 2015 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

**COUNT 5**

***Statement of Offence***

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

***Particulars of Offence***

Leveni Waqa, on the 01<sup>st</sup> day of November 2015 at Ba, in the Western Division, had carnal knowledge of Marica Ranadi, without her consent.

3. The accused pleaded not guilty to the charges and the ensuing trial lasted for 3 days. At the trial the complainant Marica Ranadi, and Ms. Raijieli Nailavi, the wife of the pastor, to whom the PW1 has relayed the incidents first, gave evidence for the prosecution while the accused remained silent exercising his constitutional right and abstained from calling any witnesses in defence.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged first count of Sexual Assault and the alleged 4 counts of Rape.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.
6. The sole witness to substantiate on the alleged incidents is the PW1, Marica Ranadi. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

**Analysis**

7. The complainant, Marica Ranadi is the accused's' biological daughter. Her mother has married and gone away. Her maternal grandparents could no longer maintain her. She had no one else other than her father to look up to. Those circumstances were not challenged. Under the given circumstances, would she frame her father, is a relevant question.
8. Marica Ranadi's evidence is clear. On the first night she was at her father's house she was allegedly sexually assaulted by her father. She explained how the accused put his hand underneath her t-shirt and touched her breasts and went down and touched her private part. Though she was asleep, she has awoken up and seen the accused touching her. The accused has signaled her to be quiet. The

given evidence covers all the ingredients of the alleged 1<sup>st</sup> count of sexual Assault. The cross examination on behalf of the accused failed to create a reasonable doubt in the prosecution case.

9. The 2<sup>nd</sup> to 5<sup>th</sup> are counts of rape. It is apparent that the complainant was living with her paternal grandparents but the accused used to take her to his house from time to time. Most of the alleged incidents of rape has taken place either on the sugarcane field or on the tramline along the way between these houses. Since the complainant was above the age of 13 years by then, her consent should be addressed. It is obvious the assessors were sure that the complainant did not consent, freely and voluntarily , because even I gave them the option of defilement in regards to the 2<sup>nd</sup> and 3<sup>rd</sup> counts, still they opined the accused be guilty of rape as alleged. Having carefully observed the demeanor and also the given evidence, I have no reason to deviate from the unanimous opinion of the assessors.
10. When considered the elements of the alleged offences, the identity of the accused was never challenged. The other elements were clearly established by the prosecution through the evidence. As far as the evidence of the Marica Ranadi is concerned, there were no material inconsistencies *per se* or *inter se*. The evidence of the PW2 substantiates the Marica's evidence on many of the material points. In addition to recording, I have observed the witnesses and their demeanor when they were giving evidence. I am satisfied that the prosecution has established the alleged offences, beyond a reasonable doubt.
11. I am well aware that the accused need not prove anything and his innocence is presumed. When the prosecution establishes a case beyond reasonable doubt it is my duty to consider the case of the accused and consider whether it creates a doubt in the prosecution case. The accused refrained from giving evidence and calling any witnesses on his behalf. It is his right to remain silent and he need not prove anything. However, when the prosecution prove their case beyond reasonable doubt, in absence of any explanation to cast doubt upon the prosecution version of events, the assessors and the court have no option but to find the accused guilty.
12. Therefore I agree with the unanimous opinion of the assessors. In the result, I find the accused guilty of the 1<sup>st</sup> count of sexual Assault contrary to section 210

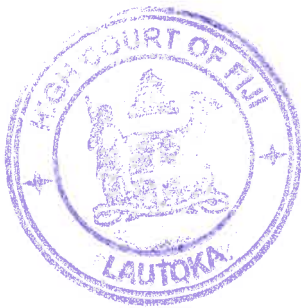
(1) (a) of the Crimes Act and also of 4 counts of rape under section 207(1) and 2 (a) of the Crimes Act as alleged and accordingly convict him of the same.

13. I convict the accused of;

One count of 'Sexual Assault' contrary to section 210 of the crimes Act,  
and;

Four counts of Rape contrary to section 207 (1) and 2 (a) of the Crimes Act.

14. This is the Judgment of the Court.



**Chamath S. Morais**  
**JUDGE**

*Solicitor for the Prosecution*  
*Solicitor for the Accused*

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*Office of the Director of Public Prosecution, Lautoka*  
*Office of the Legal Aid Commission, Lautoka*