

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

**Criminal Case No.: HAC 34 of 2016**

**STATE**

**V**

- 1. VILIAME LIVANASIGA SEMO**
- 2. NACANIELI BULIVOU**

**Counsel** : Ms. R. Uce for the State.  
: Ms. P. Reddy for the first Accused.  
: Ms. K. Vulimainadave for the second Accused.

**Dates of Hearing** : 05 and 06 May 2020  
**Closing Speeches** : 07 May, 2020  
**Date of Summing Up** : 07 May, 2020  
**Date of Judgment** : 08 May, 2020

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**JUDGMENT**

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

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

**COUNT ONE**  
**[REPRESENTATIVE COUNT]**

***Statement of Offence***

**RAPE**: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

***Particulars of Offence***

**VILIAME LIVANASIGA SEMO**, between the 1<sup>st</sup> day of January 2014 and 31<sup>st</sup> day of December, 2015 at Nadi in the Western Division penetrated the vagina of “**KK**” with his penis.

**COUNT TWO**  
**[REPRESENTATIVE COUNT]**

***Statement of Offence***

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

***Particulars of Offence***

**VILIAME LIVANASIGA SEMO**, between the 1<sup>st</sup> day of January 2014 and 31<sup>st</sup> day of December, 2015 at Nadi in the Western Division indecently and unlawfully assaulted “**KK**” by rubbing his penis on her vagina.

**COUNT THREE**  
**[REPRESENTATIVE COUNT]**

***Statement of Offence***

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

***Particulars of Offence***

**NACANIELI BULIVOU**, between the 1<sup>st</sup> day of August, 2014 and 31<sup>st</sup> December, 2015 at Nadi in the Western Division penetrated the vagina of “**KK**” with his tongue.

**COUNT FOUR**  
***Statement of Offence***

**[REPRESENTATIVE COUNT]**

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

***Particulars of Offence***

**NACANIELI BULIVOU**, between the 1<sup>st</sup> day of August, 2014 and 31<sup>st</sup> December, 2015 at Nadi in the Western Division procured “**KK**” to rub the penis of **NACANIELI BULIVOU** with her hand.

**COUNT FIVE**  
**[REPRESENTATIVE COUNT]**

***Statement of Offence***

**INDECENTLY INSULTING OR ANNOYING ANY PERSON**: Contrary to section 213 (1) (a) of the Crimes Act 2009.

***Particulars of Offence***

**NACANIELI BULIVOU**, between the 1<sup>st</sup> day of August, 2014 and 31<sup>st</sup> day of December, 2015 at Nadi in the Western Division with intent to insult the modesty of “**KK**”, masturbated in front of the said “**KK**”.

**COUNT SIX**  
**[REPRESENTATIVE COUNT]**

***Statement of Offence***

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

**NACANIELI BULIVOU**, between the 1<sup>st</sup> day of January 2014 and 31<sup>st</sup> day of December, 2015 at Nadi in the Western Division indecently and unlawfully assaulted “**KK**” by rubbing his penis on her buttocks.

2. In the summing up delivered by this court the assessors were reminded that after the prosecution had closed its case, the first accused had a case to answer in respect of count two only as per the amended information being for the offence of sexual assault.
3. In respect of the second accused the assessors were reminded that this accused had a case to answer in respect of the lesser offence of sexual assault in count three and count six only.
4. The three assessors returned with a unanimous opinion that both the accused persons were guilty of the offences of sexual assault.
5. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.

6. The prosecution called one witness, the complainant whereas both the accused persons exercised their right to silence and also did not call any witness.
7. The complainant who was 9 years of age in the year 2014 and a class 4 student at that time informed the court that sometimes in the year 2015 the first accused Viliame who was her cousin had come to her house with his parents and his sister Seruwaia.
8. The parents of the complainant and the parents of the first accused were having a kava session, since it was night time the complainant with her two year old cousin Kini and Seruwaia went to sleep.
9. After a while the first accused came into the bedroom and walked to where the complainant was lying down. The accused removed his pants and underwear and then removed the complainant's pants and panty and started to rub his penis on her vagina.
10. The complainant was afraid so she did not do anything, at this time both her cousins were sleeping in the same room. The complainant did not tell anyone about what the first accused had done to her because she was afraid that nobody would believe her.
11. In regards to the second accused the complainant told the court that Nacanieli Bulivou was her grandfather who had come to stay with her family at Nawaka, Nadi. The complainant used to call the second accused Tutu Buli. The complainant recalled on one occasion in the year 2014 when she was in her bedroom during night time the second accused who used to sleep in the living room came into her bedroom.

12. In the bedroom the complainant was with her two year old cousin brother who was sleeping at the time. The complainant was wearing her pants, t-shirt and panty. The second accused came into the bedroom opened his pants and rubbed his penis on her buttocks from on top of her clothes whilst she lay on the bed. Whilst doing this, the second accused came to know that the complainant was awake so he turned her to face him and then pulled down her pants and panty and licked her vagina.
13. The complainant was helpless, she did not do anything, after a while the second accused left, thereafter the complainant pulled up her panty and pants and went to sleep. The complainant did not tell anyone about what the accused had done to her because she was afraid. According to the complainant the accused had done this to her on more than one occasion.
14. On another occasion, in late 2014 or early 2015 the second accused took the complainant and her two year old cousin Kini to her aunt's house at Navakai, Nadi. In the night the complainant felt uncomfortable sleeping in the living room so she went into the bedroom where the second accused was sleeping and she slept on the bed next to the accused.
15. After a while the second accused started to touch the complainant's thighs and then pulled down her skirt and panty and started licking her vagina. The complainant tried turning away telling the accused to move but the second accused kept on pulling her clothes while she kept on pushing him. The second accused did not move away but finally the complainant was able to move around and get out of the bed and leave.
16. The complainant was scared and helpless, she did not tell anyone at her aunt's house because she thought they won't believe her. Also on one occasion the complainant had gone for a swim with her family members but she did not tell anyone since all her family members were busy and having fun and she did not want to spoil their mood.

17. In 2016 the complainant told her cousin Seruwaia about what the first and the second accused persons had done to her in 2014 and 2015. The complainant told Seruwaia after she was questioned by Seruwaia who had some suspicion that something was going on. Thereafter Seruwaia told the complainant's grandmother Moira Williams. When the complainant was questioned by her grandmother she confirmed the incidents, the matter was then reported to the police by the complainant's parents.
18. On the other hand both the accused persons denied committing the offences as alleged. The first accused contention was that if the allegation was true then the complainant would have woken up Seruwaia who was sleeping in the same room. Seruwaia was the same age as the complainant and she had all the opportunity to do so but did not.
19. Furthermore, the complainant would have informed her family members or shouted or alerted someone within the household or Seruwaia about what the first accused had done to her. Moreover, the complainant was going to school at that time and she could have told her teacher. The complainant did not do the above, because nothing had happened.
20. In view of the above, the complainant had made up a story against the first accused and had not told the truth in court.
21. The second accused contention was that the complainant did not kick, or shout or scream or resist. The allegation cannot be true because if it was the truth the complainant would not have slept beside the second accused at her aunt's house after what she had alleged the accused had done on an earlier occasion.

22. The complainant also did not tell any of her family members about what the second accused was doing to her and had lied about the allegations against him.
23. The defence also contended that the evidence of the complainant is not probable in the circumstances of this case.
24. Taking into consideration the evidence adduced by the prosecution, I accept the evidence of the complainant as truthful and reliable. I have no doubt in my mind that the complainant told the truth in court. Although the complainant was taking time to answer questions, I accept this to be a natural consequence since the complainant was 9 and 10 years of age when the incidents took place and there has been a considerable lapse of time about 6 years from the first incident in 2014.
25. Despite the passage of time the complainant was able to remember what the accused persons had done to her. The demeanour of the complainant was consistent with her honesty, she was able to withstand cross examination and was not discredited.
26. The complainant was also consistent in her evidence, I accept that the complainant gave an honest account of what the accused persons had done to her. It was also noticed that the complainant was not evasive when answering questions.
27. Victims of sexual offences may react in different ways to what they may have gone through. Here the complainant was 9 years of age when she first starting experiencing unexpected sexual encounters firstly from her grandfather who was living with her family and thereafter by her cousin brother who was very much trusted by her parents.

28. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A complainant's reluctance to complain in full or not at all as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
29. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. In the circumstances, I accept that the late complaint to the police or the complainant relaying the incidents upon questioning by Seruwaia does not affect the credibility of the complainant.
30. Considering the complainant's age at the time, I accept the complainant was afraid and had kept the incidents to herself because she was of the view that nobody would believe her. The first accused and his family were very much trusted by the complainant's family and therefore the reason for not complaining to anyone is understandable particularly when the complainant said she was afraid and did not know what to do.
31. The second accused is the grandfather of the complainant who used to stay with her family and at times this accused used to supervise the complainant when her parents were not at home the complainant was also obedient to the second accused.
32. I accept that the complainant was afraid when the accused persons were sexually assaulting her and considering her age at the time and the circumstances of the offending it is quite natural for a child not to understand what is happening and therefore will not be able to respond in a timely and appropriate manner.
33. This court rejects the defence of both the accused persons. On the totality of the complainant's evidence the fact that the complainant did not shout



or yell or scream or kick the accused persons does not affect the credibility of the complainant as well.

34. The defence has not been able to create a reasonable doubt in the prosecution case in respect of all the offences.
35. This court is satisfied beyond reasonable doubt that the first accused between the 1<sup>st</sup> day of January, 2014 and 31<sup>st</sup> day of December, 2015 indecently and unlawfully assaulted the complainant “KK” by rubbing his penis or her vagina.
36. This court is satisfied beyond reasonable doubt that the second accused between the 1<sup>st</sup> day of August, 2014 and 31<sup>st</sup> day of December, 2015 indecently and unlawfully assaulted the complainant “KK” by licking her vagina.
37. This court is also satisfied beyond reasonable doubt that the second accused between 1<sup>st</sup> day of January, 2014 and 31<sup>st</sup> day of December, 2015 indecently and unlawfully assaulted the complainant “KK” by rubbing his penis on her buttocks.
38. I agree with the unanimous opinion of the assessors that the first accused is guilty of one count of sexual assault and the second accused is guilty of two counts of sexual assault.
39. In view of the above, the first accused is acquitted of count one for the offence of rape but is convicted of count two for the offence of sexual assault, the second accused is acquitted of the third count of rape but is convicted of the lesser offence of sexual assault and also count six for the offence of sexual assault. The second accused is acquitted of counts four and five.

40. This is the judgment of the court.

  
**Sunil Sharma**  
**Judge**

**At Lautoka**

08 May, 2020

**Solicitors**

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

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