

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

**Criminal Case No.: HAC 111 of 2017**

**STATE**

**V**

**NACANIELI RAIDA CAGIMAICAMA**

**Counsel** : Mr. T. Tuenuku for the State.  
: Ms. A. Bilivalu for the Accused.

**Dates of Hearing** : 12, 13 and 14 August, 2020  
**Closing Speeches** : 17 August, 2020  
**Date of Summing Up** : 18 August, 2020  
**Date of Judgment** : 20 August, 2020

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**JUDGMENT**

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

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

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**NACANIELI RAIDA CAGIMAICAMA**, between the 01<sup>st</sup> day of January, 2016 and the 31<sup>st</sup> day of December, 2016 at Vatudua Settlement, Rakiraki, Ra in the Western Division, unlawfully and indecently assaulted “**UT**”, by licking her vagina.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**NACANIELI RAIDA CAGIMAICAMA**, between the 01<sup>st</sup> day of April, 2017 and the 30<sup>th</sup> day of April, 2017 at Vatudua Settlement, Rakiraki, Ra in the Western Division, penetrated the vagina of “**UT**”, with his penis, without the consent of the said “**UT**”.

2. The three assessors returned with a unanimous opinion that the accused was guilty of the offence of sexual assault and rape as charged.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called three witnesses and the accused exercised his right to remain silent and did not call any witness.
5. The complainant informed the court that the accused is her stepfather. In the year 2016 she was living at Nakorokula, Rakiraki with the accused, her mother and her two siblings. The complainant was a High School student and at that time she was 17 years of age.
6. On 29<sup>th</sup> May, 2016 after her mother had left for work the accused told the complainant and her siblings not to go to school. The accused sent

both her siblings to get water from the village which was about 15 minutes walk from her home.

7. The complainant was inside the house, when the accused came and closed the door, she was shocked the accused came and forcefully started removing the complainant's clothes, as she tried to stop him she got pushed on the floor lying face up on her back.
8. When the complainant was on the floor the accused with one hand started removing her singlet and skirt and with the other hand he held her on the floor. The complainant tried to push the accused away but she could not. The accused was able to remove both her clothes, after this, the accused forcefully sucked the complainant's breast and then licked her vagina for about 5 minutes.
9. The accused threatened her not to tell anyone otherwise he will use a knife on her or her mum. The complainant did not tell her siblings or her mother when they returned home about what the accused had done to her because her siblings and her mum including the complainant were all scared of the accused. The complainant's mother is also sickly who suffers from epilepsy.
10. After this incident, in April, 2017 without telling anyone at home the complainant went to her mother's village at Dobuilevu, the complainant stayed with her aunt Meiva Loga for one week but she did not tell her aunt anything about what the accused had done to her because she thought of her mother who was staying with the accused.
11. After the school holidays ended the complainant went to school and then went home. At home the accused scolded and swore at the complainant for going to her mother's village.

12. Next morning the complainant's mother went to work, the complainant and her siblings were getting ready to go to school, her siblings took the lead to the school. On this day the complainant was planning to leave her home for good.
13. As the complainant was about to leave the house with her bag the accused once again scolded her and told her to open her bag. When the accused saw her clothes he took the school bag and burnt it outside the house and told the complainant not to go to school and stay at home.
14. The complainant went into the house crying and she sat in the sitting room the accused came and closed the door. At this time, the accused asked the complainant if she wanted to go to school when she said "yes" the accused told her to have sex with him before going to school.
15. The complainant pushed the accused and she saw some cane knives in the sitting room where she used to sleep. The accused forced her to lie down by pushing her with his hands he then came on top of her removed his clothes and then removed her clothes.
16. The complainant was facing up so the accused pressed her breast, licked her vagina and then forcefully penetrated his penis into her vagina, it was painful she tried to push him but could not. There was a cane knife beside the accused he threatened the complainant by saying that he will cut her neck if she moved. The accused had sex with the complainant for about 5 minutes.
17. The complainant did not tell her mother about what the accused had done to her, after a few days, the complainant's mother was going to her village and the complainant went with her.
49. At her mother's village she told her aunt Meiva Loga about what the accused had done to her she was taken to the Dobuilevu Police Post to

report the incidents. The reason why she told her aunt was because she was away from the accused with her mother in her mother's village so she felt comfortable in telling her aunt.

18. The complainant did not tell her mother because her mother was sickly she also did not tell her teacher or her friends because the accused had threatened her if she told anyone he will harm her and her mother. The complainant was medically examined at the Rakiraki Hospital.
19. The second witness Dr. Tevita Tamani on 28<sup>th</sup> May, 2017 had examined the complainant at the Rakiraki Hospital. Upon vaginal examination of the complainant the doctor noted that the hymen was not intact or torn and also there was a whitish vaginal discharge present.
20. The doctor further stated in this case vaginal penetration was high on the list which was consistent with the history given to him and his medical findings.
21. According to the doctor the whitish discharge was consistent with sexual assault and the first medical thought was that the infection was sexually transmitted.
22. The final witness Meiva Loga informed the court that on 28<sup>th</sup> May, 2017 she was staying at Dobuilevu, at about 9am the complainant and her mother came home. After returning from Dobuilevu Police Post (for an unrelated matter) on their way home the complainant told the witness who was the aunt of the complainant "*mum dad harassed me*". The witness asked her how? The complainant said by touching her breast.
23. When the witness asked the complainant whether they had sexual intercourse the complainant said "yes". The witness was touched by this response because the complainant was her niece and she had brought

her up since she was born until the complainant was 5 years when she left with her mother to stay with the accused.

24. From the line of cross examination the defence took the position that the accused did not commit the offences as alleged. The accused did not lick the vagina of the complainant on 29<sup>th</sup> May, 2016 and he also did not forcefully penetrate her vagina with his penis in April, 2017.
25. The defence further stated that the evidence of the complainant was not possible in the circumstances as narrated by her. The complainant had made up a story to implicate the accused since she was coached and /or forced by her aunt Meiva Loga to report the matter to the police.
26. Furthermore, if the complainant was indeed sexually assaulted and raped by the accused she would have told her aunt everything at her mother's village. The accused did not do anything to the complainant as alleged she hated the accused because he was strict on her since he did not allow the complainant and her mother to go to her maternal village hence the complainant made the false allegations against the accused.
27. The aunt of the complainant Meiva Loga also did not tell the truth because like the complainant Meiva did not like the accused because he had stopped the complainant and her mother from visiting Meiva and her family and he had also stopped Meiva from coming to his house.
28. The medical report of the complainant was not conclusive since the doctor could not be sure how the hymen of the complainant got torn or was not intact since there are other causes by which a hymen may not become intact or get torn.
29. Taking into consideration the evidence adduced by the prosecution and the line of defence put forward by the accused, 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. She gave a coherent account of what the accused had done to her.

30. I accept that the complainant was scared of the accused and that she had no choice but to wait for the opportunity to leave the accused house with her mother. Although after the first incident the complainant did go to her mother's village she did not tell anyone about what the accused had done to her because she was fearful that the accused would do something to her sickly mother as threatened by him.
31. I also accept that the accused had threatened the complainant with a knife to harm her or her mother. There were some inconsistencies between the evidence of the complainant and her police statement, however, the inconsistencies were not significant to adversely affect the credibility of the complainant's evidence.
32. The inconsistencies relating to the day of the alleged incidents, whether the complainant was threatened or not did not shake or upset the basic version of the complainant's evidence or go to the root of the allegations. The complainant was not discredited in respect of the allegations.
33. From my observations, the complainant was steadfast in respect of what the accused had done to her. The complainant's demeanour was consistent with her honesty, and she was also able to withstand cross examination.
34. There was a delay in reporting the first allegation of sexual assault for about one year, from May 2016 to May 2017, however, considering the circumstances of the complainant this delay was inevitable it was not that the complainant did not want to tell anyone about what the accused had done to her. The complainant and her mother could not leave the accused house and they were scared of the accused as well.

35. There has also been some inconsistencies between the evidence of the complainant and her aunt Meiva about when the complainant told her aunt about what the accused had done to her and exactly what was told to Meiva. It is understandable that the complainant was faced with a compelling situation arising from within her own household by the very person in whose house the complainant was living and considering the passage of time the inconsistencies between the complainant's evidence and the evidence of Meiva did not create any doubt on the credibility of the complainant.
36. In my judgment the complainant did convey to her aunt important and relevant information about what the accused had done to her which was enough to alert her aunt. There was no need for the complainant to give exact details of everything whether the complainant told her aunt about what had happened to her at the Dobuilevu Police Post or at the Rakiraki Hospital is immaterial as long as the complainant did tell her aunt what had happened to her.
37. The inconsistencies in my view was a natural occurrence due to lapse of time. The doctor who examined the complainant in his medical findings also found that the hymen was not intact and there was sexually transmitted infection upon vaginal examination of the complainant. Meiva also told the truth about what the complainant had told her at Dobuilevu.
38. I accept the evidence of all the prosecution witnesses as truthful and reliable. The defence has not been able to create a reasonable doubt in the prosecution case.
39. This court is satisfied beyond reasonable doubt that the accused between the 1<sup>st</sup> day of January 2016 and the 31<sup>st</sup> day of December 2016 unlawfully and indecently assaulted "UT" by licking her vagina. This court is also satisfied beyond reasonable doubt that the accused between



the 1<sup>st</sup> day of April, 2017 and the 30<sup>th</sup> day of April 2017 penetrated the vagina of "UT" with his penis, without the consent of the said "UT".

40. This court also accepts that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
41. For the above reasons, I accept the unanimous opinion of the assessors that the accused is guilty on one count of sexual assault and one count of rape as charged.
42. In view of the above, I find the accused guilty and convict him for one count of sexual assault and one count of rape.
43. This is the judgment of the court.



*Sunil Sharma*  
**Sunil Sharma**  
**Judge**

**At Lautoka**

20 August, 2020

**Solicitors**

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

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