

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 287 of 2017

STATE

v.

NEMANI MUSUDOLE

Counsel: Ms. U. Tamanikaiyaroi and Ms. L. Bogitini for State
Mr. F. Vosarogo for Respondent

Date of Summing Up: 28th February 2018

Date of Judgment: 01st March 2018

JUDGMENT

1. The name of the Complainant is suppressed.
2. The Accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are that:

COUNT ONE

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

NEMANI MUSUDOLE on the 10th of September 2017 at Raiwaqa in the Central Division penetrated the anus of **AB** a child under the age of 13 years with his finger.

COUNT TWO*Statement of Offence*

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

Particulars of Offence

NEMANI MUSUDOLE on the 10th of September 2017 at Raiwaqa in the Central Division, unlawfully and indecently assaulted **AB**, by licking the vagina of the said **AB** by the use of his tongue.

COUNT THREE*Statement of Offence*

NEMANI MUSUDOLE on the 10th of September, 2017 at Raiwaqa in the Central Division, unlawfully and indecently assaulted **AB**, by licking the anus of the said **AB** by the use of his tongue.

3. The hearing commenced on the 26th of February 2018 and concluded on the 27th of February 2018. The Prosecution adduced the evidence of four witnesses, including the Complainant. At the conclusion of the prosecution case, the court found that there is no evidence adduced by the prosecution in order to establish main elements of the third count of Sexual Assault. The Court, accordingly dismissed the third count of Sexual Assault and acquits the accused from the same, pursuant to section 231 (1) of the Criminal Procedure Act,
4. The Accused opted to exercise his rights to remain in silence. Accordingly, the defence did not adduce any evidence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing submissions. I then made my summing up. The three assessors in their unanimous opinion found the accused guilty for both counts.

5. Having carefully considered the evidence adduced during the hearing, the respective closing submissions of the counsel, the summing up and the unanimous opinion of the assessors, I now proceed to pronounce my judgment as follows.
6. The Complainant in her evidence specifically stated that the Accused touched her backside with his finger. The accused had taken the Complainant into the toilet. He has touched inside her back with his finger. The Complainant used the word "bum" and said that he touched inside of her "bum" with his finger. The Complainant further said in her evidence that the accused licked her "pipi" with his tongue.
7. The mother of the complainant, in her evidence explained that the Complainant uses the word "bum" to refer her anus and "pipi" to refer her vagina. The mother of the complainant said that she saw the complainant was coming out of the toilet, just after the accused came out from the same toilet.
8. Doctor Elvira in her evidence explained about the specific medical findings that she found during the medical examination of the complainant. She has found bruises on both sides of *labia minora*. According to the medical opinion given by the Doctor, such bruises could not have caused by the touching of tongue. The Doctor further explained that such wound that she noticed around *labia minora* could have caused if a finger entered into the anus of a small child as of the complainant. At such a small age, the distance between the *labia minora* and the anus is very close. Therefore, an injury that applies on anus can also reach to the *labia minora*.
9. Moreover, the Doctor has noted bruises close to perineum. Such bruises could have caused by an erected penis or a finger. According to her evidence, such wound could last for seven days before it heals. She further said that the bruises that she noticed in the Complainant would have occurred anytime between 10th to 14th of September 2017.
10. Having taken into consideration the evidence given by the Complainant, the mother of the complainant and Doctor Elvira, I am satisfied that the accused has penetrated the anus of the complainant with his finger. Moreover, I am satisfied that the accused has indecently and without any lawful excuse has licked the vagina of the Complainant. I

accordingly accept the evidence given by the Complainant, the mother of the complainant and Doctor Elvira as credible, reliable and truthful evidence.

11. In view of the above findings, I do not find any cogent reasons to disregard the unanimous opinion of guilt given by the three assessors.
12. I accordingly find that the prosecution has proven beyond reasonable doubt that the accused is guilty for these two counts as charged. Therefore, I hold that the accused is guilty for the offence of Rape, contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act and for the offence of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
01st March 2018

Solicitors
Office of the Director of Public Prosecutions for the State
Mamlakha lawyers for Defence