

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO.HAC 129 of 2018

BETWEEN : **STATE**

AND : **TEVITA LEWAI**

Counsel : Ms. S. Serukai and Dr. A. Jack for the State
Ms. S. Nasedra for the Accused

Hearing on : 03rd of December - 11th of December 2018

Summing up on : 12th December 2018

Judgment : 13th December 2018

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "LGJ"

JUDGEMENT

[1] The accused, Tevita Lewai, was charged with the following offence:

FIRST COUNT

Statement of Offence

RAPE : Contrary to Section 207 (1) and 2 (b) and (3) of the Crimes Act No. 44 of 2009.

Particulars of Offence

Tevita Lewai, between the 1st day of May, 2016 and 31st day of May, 2016 at Namulomulo village, Tailevu in the Eastern Division, penetrated the vagina of a child under the age of 13 years, with his finger.

[2] The accused pleaded not guilty to the charges and the ensuing trial was held over 5 days.

- [3] At the conclusion of the prosecution case, Court acting under section 231(2) called for the defense in respect of the Count and having explained of his legal rights, the Accused elected to give evidence.
- [4] The Court, properly given directions by way of the summing up, by an unanimous decision the three Assessors found the accused not guilty of the charge of Rape.
- [5] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also with the opinions of the Assessors.
- [6] During my summing up I explained to the Assessors the salient provisions of Sections 207 (1) and (2) (b) and (3) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [7] The Assessors were directed that in order for the prosecution to prove the count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) On the specified period (in this case between the 1st of May 2016 and 31st of May 2016);
 - (iii) At the specified place (in this case at Namulomulo village, Tailevu in the Eastern Division);
 - (iv) Penetrated the vagina of LGJ with his finger.
- [8] Each of the above elements were further elaborated upon in my summing up.
- [9] Since there were no agreed facts in this case, it has been duty of the prosecution to prove all the ingredients of the offence beyond reasonable doubt.
- [10] In support of their case, the prosecution called six witnesses. Though it is amply evident that little child LGJ, had suffered injuries, the real question has been of the identity of the culprit who committed the offence. Based on the unusual background of this case, the shadow of suspicion would cast upon a many. In my opinion, the prosecution could not single out the accused and prove beyond reasonable doubt the guilt of accused.
- [11] The accused being explained of his rights elected to give evidence. The evidence of the accused filled in many gaps left by the prosecution, and fitted well with most of the proven facts.
- [12] Having considered the evidence in totality, I am of the opinion that the prosecution evidence is not entirely credible and reliable.

- [13] It is clear that all the Assessors rejected the evidence of the prosecution as not entirely truthful and reliable, as they have unanimously found the accused not guilty of the charge.
- [14] In my view, the opinion of the Assessor's is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinion of the Assessors.
- [15] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt.
- [16] In the circumstances, I find the accused not guilty of the charge of Rape and accordingly I acquit him of the said charge.

Chamath S. Morais
JUDGE

HIGH COURT OF FIJI
AT SUVA

Dated this 13th Day of December 2018

Solicitors for the State : ***Office of the Director of Public Prosecutions, Suva.***
Solicitor for the Accused : ***Legal Aid Commission, Suva.***