

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 137 of 2017

STATE

v.

SOLOMONE DAUNAKAMAKAMA

Counsel: Ms. S Serukai for State
Ms. L. Ratidara with Mr E. Radio for Accused

Date of Hearing: 9th, 11th and 12th April 2018

Date of Summing Up: 16th April 2018

Date of Judgment: 17th April 2018

JUDGMENT

1. The names of the two Complainants are suppressed.
2. The Accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and three counts of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act. The particulars of the offences are that:

SOLOMONE DAUNAKAMAKAMA is charged with the following offences:

COUNT ONE

Statement of Offence.

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

Particulars of Offence

SOLOMONE DAUNAKAMAKAMA on the 26th of March, 2017, at Naqiriqiri Settlement, in the Central Division, had carnal knowledge with **AA**, who is a child under the age of 13 years old.

COUNT TWO

(Representative Count)

Statement of Offence

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

Particulars of Offence

SOLOMONE DAUNAKAMAKAMA on the 3rd of December, 2016 at Naqiriqiri Settlement in the Central Division, penetrated the vulva of **AB**, who is a child under the age of 13 years old, with his finger.

COUNT THREE

(Representative Count)

Statement of Offence

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

Particulars of Offence

SOLOMONE DAUNAKAMAKAMA on the 10th of December, 2016 at Naqiriqiri Settlement in the Central Division, penetrated the vulva of **AB**, who is a child under the age of 13 years old, with his finger.

COUNT FOUR

(Representative Count)

Statement of Offence

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

Particulars of Offence

SOLOMONE DAUNAKAMAKAMA on the 18th of December, 2016 at Naqiriqiri Settlement in the Central Division, penetrated the vulva of **AB**, who is a child under the age of 13 years old, with his finger.

3. The hearing commenced on the 9th of April 2018 and concluded on the 12th of April 2018. The prosecution adduced the evidence of three witnesses, including the two Complainants. The accused neither gave evidence nor called any other witnesses for the defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up.
4. The three assessors returned with a mixed opinions, where one assessor found the accused guilty for each of the four counts, while two assessors found him not guilty for all the four counts.
5. Having carefully considered the evidence adduced during the hearing, the respective closing addresses of the counsel, the summing up and the opinions of the assessors, I now pronounce my judgment as follows.
6. The prosecution alleges that the accused penetrated the vagina of the first Complainant with his penis on the 26th of March 2017. She was twelve years old at that time.
7. The first Complainant gave evidence, explaining the events that took place on the 26th of March 2017, in relation to this allegation. She had gone to the house of the accused, where he had taken her into his room. He had then removed her clothes and made her lie down on the bed. He then inserted his penis into her vagina.
8. Doctor Elvira, who conducted the medical examination of the two Complainants, said in her evidence, that she noticed healed hymen laceration, situated at 6'clock position in the vagina of the first Complainant. According to her opinion, such an injury could

have caused by an erected penis or finger going through the vaginal opening with force. She further said that there is no possibility of causing such injury due to the scratching by the Complainant.

9. During the cross examination, the first Complainant said that she suffered itchiness on her body during the time she used to sleep in the forest. However, Doctor Elvira's opinion ruled out any possibility that the injuries that she found in her vagina would have caused by scratching.
10. The defence suggested that the first and second Complainants made this false allegation because of the refusal of the accused to give them food. Both the Complainants refused and denied the said proposition of the defence.
11. Moreover, the defence suggested that the evidence given by the first Complainant is not consistence with the statement she made to the police. There is no such statement tendered in evidence. The first Complainant had mentioned in her statement that she went to the forest after this incident. However, in her evidence she said that she went to meet the second Complainant. The first Complainant then explained that she first went to the forest and then went to meet the second Complainant.
12. The first Complainant was firm, straight and coherent in giving her evidence.
13. In view of the reasons discussed, I find the evidence given by the first Complainant is credible and reliable. I accordingly accept her evidence as the truth.
14. The second Complainant in her evidence explained about the three instances, where the accused inserted his fingers into her vulva.
15. Both of the Complainants were threatened by the accused, saying that if they tell anyone, he will kill them. The second Complainant was eleven years old at that time. Her mother had asked her to go and clean the house of the accused, that was the reasons she went to the place of the accused on the third occasion.

16. The second Complainant admitted that she did not mention to the police that the first Complainant got hold of her while the accused inserted his fingers into her vulva on the second occasions. Moreover, she had not stated in her statement to the police that the accused threatened her not to tell anyone. The evidence of the first Complainant was only limited to the incident that took place on the 26th of March 2017. She was not asked about any other incidents involved with the second Complainant. I find these omissions have not materially discredited the evidence given by the two Complainants.
17. I observed the manner the second Complainant gave her evidence. She was coherent, not evasive and firm when she gave her evidence.
18. In view of the reasons discussed above, I find the evidence given by the second Complainant is reliable and credible. I accordingly accept her evidence as truth.
19. Accordingly, I find the prosecution had proven beyond reasonable doubt that the accused has committed these offences as charged in the information. Therefore, I have cogent reasons to disregard the majority opinion of the assessors. I accordingly accept the minority opinion of the assessors.
20. In conclusion, I find that the accused guilty for each of these four counts of Rape as charged in the information and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
17th April 2018

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.