

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION  
CRIMINAL CASE NO.: HAC 61 OF 2015

STATE

-v-

APOROSA NACEWA

Counsel : Ms. S. Kiran for State  
Mr. E. Sailo for Accused

Date of Summing Up : 30<sup>th</sup> November, 2017

*(Name of the Complainant is suppressed. She is referred to as KB)*

**JUDGMENT**

1. Accused was charged with following count and tried before three assessors.

*Statement of Offence*

RAPE: Contrary to Section 207 [1] and [2] [a] of the Crimes Decree 44 of 2009.


*Particulars of Offence*

APOROSA NACEWA, between the 1st day of January 2014 and 31st day of December 2014 at Nadi in the Western Division, penetrated the vagina of KB with his penis without the consent of the said KB.

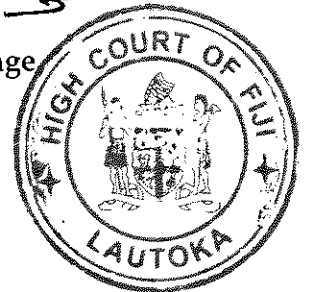
2. Assessors in their majority opinion found the Accused guilty of Rape as charged.
3. I direct myself in accordance with my own Summing Up and review the evidence lead in the trial. I pronounce my judgment as follows.
4. There is no dispute as to the identity of the Accused. It is agreed that Accused is Complainant's uncle.

5. Prosecution called 5 witnesses. Prosecution's case was substantially based on the evidence of the Complainant. Complainant's mother and grandmother were called to support the version of the Complainant as to her consistency and credibility.
6. Complainant said that Accused penetrated her on three occasions. She could not give exact dates the incidents had happened. However, she related those incidents to specific occurrences in 2014. I am satisfied that the Accused had penetrated the Complainant on three occasions in the year 2014 without her consent.
7. Bearing in mind that Prosecution has to prove the charge beyond reasonable doubt, I considered the version of the Prosecution and that of the Defence carefully.
8. Prosecution adduced evidence from Complainant's teacher, mother and grandmother to show that Complainant is not a normal person in that she is mentally and physically impaired. I had the opportunity to observe her conduct in Court. I am satisfied that Complainant is not a normal person as far as her mental capacity is concerned. It appeared that she lacks mental capacity to give consent to a sexual intercourse.
9. Defence argues that Complainant did not complain about any of those alleged incidents to her friends, grandmother or mother immediately after the incidents. According to Complainant's mother, Complainant had relayed all three incidents somewhere in February, 2015. Police investigator confirmed that relevant Complaint to police was lodged on 7<sup>th</sup> February 2015.
10. Complainant gave acceptable explanations for the delay. She said that she was scared of her mother, grandfather, grandmother, and also of the Accused. Her fear was proved to be well founded when her grandmother said that, when she learnt about those incidents, she actually beat Complainant with a stick for allowing the Accused to come inside the house.
11. There is no evidence that Complainant had screamed or fought with the Accused during alleged invasions. Given Complainant's mental and physical capacity, she could not be expected to react the way a normal person would react in such a situation. Courts can't predict how even an average person subjected to unwelcome demand for sexual intercourse would react in such a situation. I am satisfied that the complaint she ultimately made to police was genuine.
12. Accused is Complainant's uncle. There is no reason or motive on the part of the Complainant, her mother or grandmother to make up an allegation against the Accused.

13. Evidence adduced for defence could not damage the credibility of the version of the Prosecution. Margaret, the witness called by Defence is none other than a sister of the Accused. She is no doubt an interested witness as far as the Defence case is concerned. Margaret said that she does not want to see his brother going to jail. She also said that she ceased to be a friend of Complainant after this allegation was made against her brother.
14. I am satisfied that Margaret did not tell the truth to this Court regarding alleged rape incidents. Margaret however confirmed the version of the Prosecution that Complainant, who was her close friend, had visited her house on the day of the 2<sup>nd</sup> incident and that she had gone inside the house to drink water when Accused was also present in the house. She also confirmed that Complainant was attending the funeral in Nausori Highlands during the 3<sup>rd</sup> alleged incident.
15. I accept the version of the Prosecution and reject that of the Defence. Prosecution proved the case beyond reasonable doubt.
16. I accept the majority opinion of assessors. I find the Accused guilty of Rape as charged and convict the Accused accordingly.
17. That's the decision of this Court.



Aruna Aluthge  
Judge



AT LAUTOKA  
5<sup>th</sup> December, 2017

**Solicitor:** Office of the Director of Public Prosecution for State  
Office of the Legal Aid Commission for Accused