

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 68 OF 2015

STATE

-v-

KRISHNA REDDY

Counsel : **Mr. Alvin Singh for the State**

: **Mr. Tunidau for Accused**

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Date of Summing Up : **23rd January, 2017**

Date of Judgment : **24th January, 2017**

(Name of the victim is suppressed. She is referred to as JJ)

JUDGMENT

1. The Accused is charged with the following counts and tried before three Assessors.

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

KRISHNA REDDY between the 1st day of February, 2015 and 28th day of February, 2015 at Nadi in the Western Division penetrated the mouth of JJ, a 6-year-old child, with his penis.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

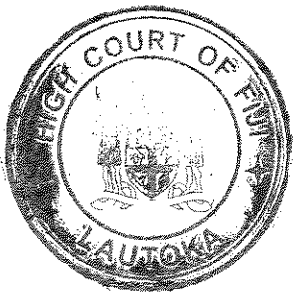
KRISHNA REDDY between the 1st day of March, 2015 and 31st day of March, 2015 at Nadi in the Western Division penetrated the mouth of JJ, a 6-year-old child, with his penis.

2. Assessors unanimously found the Accused 'guilty' on count 1 and not guilty on count 2. Having agreed with Assessor's opinion on count 1 and disagreed with their opinion on count 2, I proceed to give my reasons as follows.
3. Prosecution adduced evidence of the victim JJ, her grandmother and three other witnesses. At the end of the Prosecution case, Accused elected to give evidence in his own defence.
4. There is no dispute as to the identity of the Accused. It is admitted that the Accused is the stepfather of the victim.
5. The victim was only six years old at the time of the alleged incidents. I observed her demeanor carefully. She was straightforward and not evasive. She answered all the questions unhesitantly. I am certain JJ, at her tender age, came to know about sexual terminology because she was really exposed to the alleged sexual experience at the hand of the Accused.

6. Defence says that JJ made up this allegation because she disliked her stepfather and wanted to be with her grandmother. Evidence led in trial does not support the version of the Defence. There is no material evidence for me to believe that JJ, a girl of six years, was capable of fabricating not one but two such serious allegation against her step father who, according to Accused's own version, had treated her 'nicely'.
7. JJ had reported the incidents to her mother and grandmother albeit not immediately. JJ's grandmother, Roshni Devi, testified and confirmed that she received a complaint from JJ when she came to reside at her place. Devi in turn had relayed the information to JJ's mother Ranjeeta. Accused himself admitted that Ranjeeta questioned him about the allegation and thereafter she left the house with her children. The Police Investigation Officer confirmed that he received a complaint from Ranjeeta on the 21st of April, 2015.
8. JJ explained why the complaint was not made promptly. She said she was scared of her Papa who used to growl at her and beat her. Accused himself admitted that he did growl at JJ and beat her 'lightly' with a stick once or twice. Evidence of JJ's former Head Teacher and Child Protection Officer of Korovuto Primary School indicates that JJ had received severe beatings leaving dark marks on her body.
9. The Head Teacher had received the complaint from JJ's mother on 24th March 2015 in regard to assaults by her stepfather. According to Head Teacher's evidence, JJ's mother, after lodging the complaint, had withdrawn JJ from Korovuto Primary School on the premise that JJ would be relocated at her grandmother's house to ensure her safety. It can be inferred that JJ moved to her grandmother's place after this incident.

10. It is admitted that JJ was residing with the accused at his house in Korovuto, Nadi until 28th March, 2015. It is clear that it is only after JJ had relocated herself in a secure environment at her grandmother's place that the information about sexual assaults had come to light. In this context I am inclined to regard the complaint made by JJ to her grandmother in April as a recent complaint capable of boosting the consistency and credibility of JJ's evidence.
11. Accused advanced a self-serving version to escape criminal liability. He failed to create any doubt in the Prosecution case. Version of the Defence is that JJ fabricated this story because she disliked her stepfather. Defence also argues that the evidence JJ gave in Court is not probable and the alleged incidents could not have happened as the Accused always kept himself away from home and was engaged in his work during daytime.
12. It is highly improbable such a serious allegation to have been made by a girl of six years even though she disliked her stepfather and wanted to be away from him.
13. Even if the accused was engaged as a fulltime worker it is not improbable that the alleged incidences could have happened during daytime. JJ said that both incidents occurred when his Papa was staying at home and mother went shopping. Accused had never told police at the interview that he was engaged as a fulltime worker and he was away when the alleged incidents occurred although he was expected to advance his defence at the earliest opportunity if it was true.
14. Accused admitted that he treated JJ nicely although she was not her biological father. Evidence proved otherwise. Severe marks observed by the Child Protection Officer on JJ's body bear clear testimony to the fact that she was not treated nicely.

15. Accused said that he maintained a good relationship with JJ's mother in 2015. The fact that she had made two complaints against the accused during that period, one to JJ's school and the other to Police proves that she made truthful complaints.
16. JJ clearly said accused penetrated her mouth on two different occasions during the period mentioned in the Information although she did not mention the exact dates. A girl of six years cannot be expected to testify to the exact dates. Therefore, Assessors opinion on Count 2 that exonerated the Accused is perverse.
17. I accept the version of the Prosecution and reject that of the Defence. The Prosecution discharged its burden and proved each element of each count beyond reasonable doubt.
18. I accept the unanimous opinion of Assessors on Count one. I reject their opinion on count two. I find the Accused guilty of Rape on both counts and convict the Accused accordingly.



AT LAUTOKA

24th January, 2017

Aruna Aluthge

Judge

Solicitors: Office of the Director of Public Prosecution for the State

Kevueli Tunidau Lawyers for the Accused