

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 55 of 2014

STATE

V

SAMUELA NAVUNISARAVI

Counsel : Mr. S. Seruvatu with Ms. S. Kiran for the State.
: Ms. P. Chand with Mr. R. Goundar for the
Accused.

Dates of Hearing : 22 to 25, 28 August, 2017.
Closing Speeches : 29 August, 2017.
Date of Summing Up : 30 August, 2017.
Date of Judgment : 31 August, 2017

JUDGMENT

(The names of the complainants are suppressed they will be referred to as “AB” also known as “EAB” and “GM” respectively).

[1] The Director of Public Prosecutions charged the accused by filing the following amended information:

COUNT ONE

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to Section 149 and section 150 of the Penal Code, Cap 17.

Particulars of Offence

SAMUELA NAVUNISARAVI between the 1st day of October, 2006 and the 30th day of November, 2006 at Nadi, in the Western Division, had carnal knowledge of “**AB**” also known as “**EAB**” an 8 year old child without her consent.

COUNT TWO

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to Section 149 and section 150 of the Penal Code, Cap 17.

Particulars of Offence

SAMUELA NAVUNISARAVI between the 1st day of October, 2006 and the 30th day of November, 2006 at Nadi, in the Western Division, had carnal knowledge of “**GM**” an 8 year old child, without her consent.

- [2] The three assessors had returned with unanimous opinion that the accused was guilty for the two counts of rape.
- [3] I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
- [4] The prosecution called four (4) witnesses whilst the defence called two (2) witnesses.
- [5] The complainants “GM” and “AB” were students of a Primary School, in the year 2006 they were 8 years of age and in class 3. The accused was their class teacher.
- [6] Between 1st October, 2016 and 30th November 2006 the accused took the complainant “GM” to the last cubicle in the classroom. The complainant had some errors in her book. The accused made the complainant sit on

his lap and he opened her legs with his legs thereby spreading it apart. Whilst sitting on the lap of the accused she would be facing the other side. The accused would pull the side of her underwear and insert his penis inside her vagina.

- [7] When the accused inserted his penis into the complainant's vagina she felt his penis and it was painful. This happened on more than one occasion. The complainant did not consent to what the accused had done to her. She did not tell anyone about what the accused was doing to her because she didn't know at that time what he was doing was right or wrong.
- [8] The other complainant "AB" informed the court that between 1st October, 2006 and 30th November, 2006 the accused would take her to the last cubicle in the classroom and make her sit on his lap with the book in front of them. The accused would ask questions and at the same time shift her panty to one side since her panty was too tight the accused would pull it down to her ankle.
- [9] Whilst sitting on the lap of the accused the complainant would be facing the other side. The accused would rock her back and forth by holding her waist with his hands whilst rocking she could feel his penis on the top layer of her vagina which was her clitoris.
- [10] The complainant was scared but did not say anything. This happened on more than one occasion. The complainant did not agree to what the accused had done to her.
- [11] The third prosecution witness was Dr Elvira Ongbit on 28 November, 2006 the Doctor had examined both the complainants. The specific medical findings for both the complainants were that their hymen was intact. The hymen been intact meant there was no injury on the hymen.

- [12] The Doctor's opinion was that on the evidence of both the complainants there was penetration by the glans penis (which was the tip of the penis) of the accused through mild force exerted into the vagina of both the complainants. The Doctor also stated that since no hymnal lacerations were seen it did not mean there could be no penetration of the vagina.
- [13] The final witness was Shane Pickering who informed the court that he was a student in the same class as the two complainants. Between 1st October, 2006 to 30th November, 2006 he saw the complainant "GM" sitting on the lap of the accused in between his legs inside the last cubicle when he went to give his attendance book to the accused. The accused told the witness to go back and take his seat.
- [14] The accused informed the court that in the year 2006, he was teaching both the complainants. The accused denied all the allegations made against him by both the complainants he also denied what Shane Pickering (PW4) had told the court. Furthermore the accused was of the view that his strictness towards his students prompted such allegations to be made against him. The accused agreed that in his experience as a Teacher an 8 year old would have almost zero knowledge about sexual activity.
- [15] The second defence witness Penina Takobe informed the court that in the year 2006 she was teaching the class adjacent to the class of the accused. She was able to see the accused's classroom through the glass. She also stated that at no time she saw the complainants sitting on the accused's lap. Furthermore the witness stated that the cubicle could only fit one person and if the chair was slightly put back the other students would see.
- [16] I accept the evidence of both the complainants as truthful and reliable. I have no doubts in my mind that both the complainants told the truth in

court their demeanour was consistent with their honesty. The complainants were able to recall what had happened to them a decade ago. The complainants were forthright and straight forward in their evidence and were able to withstand cross examination. This also applies to the other prosecution witnesses their demeanour in court, the way they answered questions and gave evidence leads to the inescapable conclusion that they were truthful and can be believed.

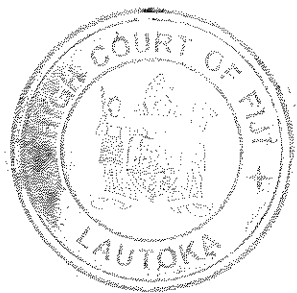
- [17] The fact that the complainants who were 8 years of age at the time did not complain to anyone or resist what was been done to them does not in any way affect the reliability of their evidence.
- [18] On the other hand I am not satisfied that the accused told the truth in court when he denied the allegations. It was obvious to me that he was very careful in choosing his words as part of his evidence. The accused was not forthright as well. I also do not accept the evidence of defence witness Penina Takobe to the extent that when the chair in the cubicle was slightly put back the other students would be able to see who was sitting on the chair in view of what Shane Pickering (PW4) told the court.
- [19] I accept the evidence of Shane Pickering who informed the court he saw the complainant "GM" sitting on the lap of the accused in between his legs inside the last cubicle. This witness had gone close enough to where the accused was sitting to be told to go away. There is no doubt in my mind that when the complainant "GM" was sitting on the lap of the accused he was able to fit himself in the cubicle by sitting on the chair.
- [20] I am satisfied beyond reasonable doubt that it was the accused who between 1st October 2006 and 30th November, 2006 had unlawful carnal knowledge of both the complainants "AB" and "GM" without their consent.

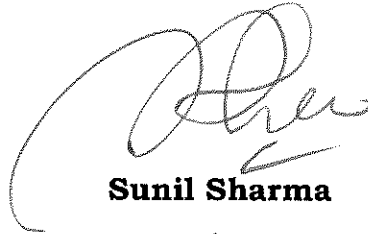
[21] The accused was in a position of authority and from his experience as a Teacher he knew the complainants were 8 years of age who had almost zero knowledge about sexual activity. I accept that the accused knew or believed the complainants were not consenting or didn't care if they were not consenting at the time.

[22] I agree with the unanimous opinion of the assessors. On the evidence before the court it was open to the assessors to reach such a conclusion.

[23] Based on the above reasons I find the accused guilty as charged for two counts of rape and I convict him accordingly.

[24] This is the Judgment of the Court.




Sunil Sharma
Judge

At Lautoka

31 August, 2017

Solicitors

Office of the Director Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.