

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 188 of 2023

STATE

vs.

SEVETI KOROIATAMA RAVAKASAI

Counsel: Ms. P. Kumar for the State
Mr. T. Varinava for Accused

Dates of Hearing: 22nd and 23rd April 2024

Date of Closing Submission: 26th April 2024

Date of Judgment: 19th June 2024

JUDGMENT

1. The Accused, Mr. Seveti Koroiatama Ravakasai, is being charged with one count of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act and one count of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act. The particulars of the offences are:

COUNT 1

Statement of Offence

RAPE: *Contrary to Section 207(1) and (2) (b) and (3) of the Crimes Act 2009.*

Particulars of Offence

SEVETI KOROLATAMA RAVAKASAI on the 12th day of February 2022 at Davetalevu Village, Tailevu in the Central Division, penetrated the vulva of **SEINI TABAKI QIO RAVOKA** a child under the age of 13, with his tongue.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

SEVETI KOROLATAMA RAVAKASAI on the same occasion as in Count 1, penetrated the vagina of **SEINI TABAKI QIO RAVOKA** a child under the age of 13, with his tongue.

2. As a consequence of the plea of not guilty entered by the Accused, the matter proceeded to the hearing. The hearing commenced on 22.04.2024 and concluded on the 23.04.2024. The Prosecution presented the evidence of three witnesses, including the Complainant, while the Accused opted to exercise his right to remain silent, hence adduced no evidence for the Defence. Subsequently, the Court heard the closing submissions of the parties. Having carefully considered the evidence adduced and the respective oral and written submissions of both parties, I now pronounce the judgment on this matter.

Burden and Standard of Proof

3. The Accused is presumed to be innocent until he is proven guilty. The burden of proof of the charge against the Accused is on the Prosecution. It is because the Accused is presumed to be innocent until he is proven guilty. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

Elements of the Offence

4. The main elements of Rape under Section 207 (1) (2) (b) of the Crimes Act are:
 - i) The Accused,
 - ii) Penetrated the vulva of the Complainant with his tongue,
 - iii) The Complainant was a child under the age of 13 years.

5. The main elements of the offence of Rape, under Section 207 (1) (2) (a) and (3) of the Crimes Act are:
 - i) The Accused,
 - ii) Penetrated the vagina of the Complainant with his penis,
 - iii) The Complainant was a child under the age of 13 years.

6. The first element is the identity of the Accused. It is the onus of the Prosecution to prove beyond a reasonable doubt that the Accused committed these offences against the Complainant. There is no dispute about the correctness of the identification. The Accused and the Complainant are known to each other. The Accused never raised the issue that the Complainant was mistaken in identifying the alleged perpetrator.

7. Evidence of the slightest penetration of the vulva/vagina of the Complainant with the tongue/penis of the Accused is sufficient to prove the element of penetration.

Admitted Facts

8. The Prosecution and the Defence tendered the following facts as the admitted facts under Section 135 of the Criminal Procedure Act:
 1. *Seveti Koroiatama Ravakasai (hereinafter referred to as the Accused) was born on the 24th of September 1986.*

2. *The Accused and the Complainant are known to each other and are related as cousins through the Accused's paternal side.*
3. *In February 2022, the Complainant lived with her uncle and aunt (Vasemaca Ravoka) and their children at Davetalevu Village, Tailevu.*
4. *The Accused in February 2022 resided in Kuku Village, Bau, Tailevu and was unemployed.*
5. *On Saturday the 12th of February 2022 the Accused was in Davetalevu Village drinking alcohol along with some others.*
6. *The Accused was arrested and taken to the Korovou Police Station on the 17th of February 2022.*
7. *On the 5th of July 2023, Detective Constable 6013 Adi Vodo Iosefo of the Fiji Police Force took 7 photographs in total of the home where the Complainant stayed in Davetalevu Village including photographs of the outside of the house, and the bedroom.*
8. *The Photographic Booklet is tendered by consent as a Prosecution Exhibit.*

Evidence of the Prosecution

9. The Complainant and the Accused are related as cousins. The Complainant was twelve years old and stayed in the village with her uncle and his family while attending school. The uncle had gone to the farm with his children, leaving the Complainant alone at home on the 12th of February 2022. The Accused, who was on his way to go somewhere, walked past the Complainant's place. The Complainant asked him where he was going, and then he asked whether she was alone at home. Finding the Complainant was alone, he came to her place and sat near the door. The Complainant also sat beside him. Having conversed for a while, the Accused started to touch her breasts and then kissed her. He then asked her

to go to the room, which the Complainant obliged. Once they went to the room, the Accused closed the windows, put the curtain down, and closed the two doors, but one door was left ajar.

10. The Accused asked the Complainant to remove her clothes, and she did as he asked. He then removed his and came on top of her when she was lying on the bed. He started to kiss her lips and breasts and then went down and penetrated her vulva with his tongue. Afterwards, the Accused penetrated her vagina with his penis. The Complainant felt pain and requested the Accused to stop, but he continued disregarding her request.
11. While this was happening, one of the Complainant's aunts, who is also related to the Accused, Laisa Biau, had seen the Complainant and the Accused sitting together near the door and then started to touch the Complainant's body. She observed all these from her house, which is in the Complainant's neighbourhood. Laisa Biau then saw the Complainant and the Accused go inside and close the doors and windows. Laisa Biau then called one of her cousins, Asinate, to go and check the Complainant's house. Asinate then went to the Complainant's house and knocked on the door, calling the Complainant.
12. The Complainant dressed and went to the door to answer Asinate. She asked the Complainant who was inside the house, to which the Complainant said no one. In the meantime, Asinate had already seen the Accused trying to put on his clothes while the Complainant was next to him through the small opening of the closed door; she knew the Complainant was not telling the truth.
13. Once Asinate left, the Accused left the house. Asinate then came back and took the Complainant with her. Once the Complainant's uncle came, Asinate related this incident to him. He then inquired from the Complainant, which she initially denied but admitted that the Accused had penetrated her vulva with his tongue first and then penetrated her vagina with his penis. The matter was then reported to the Police.

Right to Remain Silent

14. The Accused did not adduce evidence and exercised his right to remain silent. The Court must not make any adverse inferences on the fact that the Accused exercised his rights in this manner.

Evaluation of Evidence

15. I shall now proceed to evaluate the evidence presented by the Prosecution in order to determine the evidential trustworthiness of the evidence. The Court needs to consider two aspects in deciding the testimonial trustworthiness of the evidence: the credibility of the witness evidence and the reliability of the evidence. Credibility is linked to the correctness or the veracity of the evidence, while reliability is related to the accuracy of the evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (*vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).*)
16. Having carefully considered the evidence presented by the Prosecution, I do not find that the prosecution witnesses' evidence is tainted with significant and material inconsistencies and contradictions, thus affecting its credibility and reliability.
17. Regardless of not taking any action alone, Laisa Biau immediately alerted Asinate to check the Complainant's house. She had actually requested her husband to do that, but he refused. Such behaviour from a person who is related to both the Complainant and the Accused is tenable. Hence, I do not find any reason to disregard Laisa Biau's evidence. All the more so, she apparently corroborated the version of the event testified by the Complainant to a certain extent.

18. Asinate explained that she hesitated to confront the Accused as he might retaliate; hence, her main concern was on the Complainant. Asinate had promptly taken necessary steps, insofar as in her control, by removing the Complainant from her house and keeping the Complainant with her until the uncle returned home. She then promptly informed the uncle when he returned. The Complainant, though she initially refused to admit as she was scared of her uncle, admitted that the Accused penetrated her vulva with his tongue and then her vagina with his penis. I do not find the initial denial of the Complainant adversely affected her credibility and reliability. Hence, I accepted the evidence of the three Prosecution's witnesses as credible, reliable, and trustworthy.
19. In consequence of the preceding reasons discussed, I find that the Prosecution has proven these two offences against the Accused beyond a reasonable doubt. Wherefore, I hold the Accused guilty of the two counts of Rape as charged in the Information and convict of the same accordingly.



A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a vertical stroke.

Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

19th June 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.