

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 04/2013

BETWEEN : **THE STATE**
AND : **LEPANI LIKUNITOGA**
COUNSEL : **Ms J Prasad with A Paka for the State**
: **Mr S Waqainabete for the Accused**

Dates of Trial : **24-26/03/2014**

Date of Summing Up : **27/03/2014**

Date of Judgment : **28/03/2014**

[Name of the victim is suppressed. She will be referred to as A.N.T]

JUDGMENT

[01] Lepani Likunitoga has been charged with the following charge on information dated 12th day of February, 2013 by Director of Public Prosecutions.

The Charge

Statement of Offence

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

Particulars of Offence

LEPANI LIKUNITOGA on the 26th day of December 2012, at Suva, in the Central Division, raped **A.N.T** by having carnal knowledge of the said **A.N.T** without her consent.

- [02] After trial on the charge, the assessors returned unanimous opinion of guilty against the accused. I direct myself on my own summing up and on looking at the evidence in its entirety I find that I cannot agree with the guilty verdict of the assessors. I find the guilty verdict of the assessors appears to be perverse.
- [03] In this case prosecution charged the accused for committing one count of Rape against the victim.
- [04] The victim **A.N.T** was 22 years old at the time of the incident. In the year 2012 she resided at Nausori. On 25/12/2012, she went to her sister-in law's place to celebrate Christmas. Towards the night four of them drank rum and beer. After drinking, the four of them went to Raiwaqa and drank some more beer and went to Suva City. This time their gang consisted of 08 persons. All went to the Ritz Night Club, drank some more beer and danced till dawn. When Ritz Night Club was closed she walked to another night club with a person called Iowane. While walking, both stopped near the Flea Market. Iowane then spoke to a security guard at the Flea Market who then told both of them to come inside by climbing over the gate. A carton about the size of the witness box was given to them by the security officer and went away. Both sat on the carton, talked for some time and had sexual intercourse. After that Iowane talked to the security officer and went out to buy something. In the absence of Iowane, the security officer came to her and requested to have sex. As she said no, the security officer then pushed her down by her chest, removed her pants. Though she moved on her back, the security officer lay on top of her, removed her T- shirt, touched her breasts, parted her legs and had sexual intercourse. Though she shouted and pushed the security officer but he had sexual intercourse with her forcibly. After having sex, when both were wearing their pants, another security officer came there and she told him what happened to her. When she told this to the second security officer, the

first security officer was standing there and listening to their conversation. The second security officer then took her to the Market Police Post and told the police what he had seen. Thereafter, both had been referred to Totogo Police Station where her statement was recorded and she was taken for medical examination at the CWM Hospital. She identified the first security officer as the accused in this case.

[05] In the cross examination the victim admitted that she did not tell police that she had sex with her boy friend. She said that she did not go to hospital immediately but went in the afternoon. She had not sustained injuries on her buttocks when she went backward on the floor. Victim admitted that she asked money from the accused. She also admitted that she came and sat down voluntarily where the accused sat on the carton.

[06] According to the accused he was on night duty at Flea Market on 26/12/2012. At the early hours a couple came in front of the market and started to hug each other. Seeing this he called the couple inside Flea Market as it is a dangerous area. Both came inside climbing over the wall. He then gave a carton and went away to perform his duty. When he returned after a while had seen the couple having sex. After sex the couple started to talk and he told them to leave the place. But the girl was short of money. He overheard the boy telling the girl to find her own way. At that time the accused proposed sex for money from the couple. After consulting with the boy, the girl voluntarily came and sat on the carton. He then took off her pants and panty, kissed her stomach, parted her legs and had sexual intercourse. After about 1-2 minutes when the girl said enough, he stopped. He then gave money to her and she left the place.

[07] The victim had sex with her male companion inside the Flea Market before the incident. Her male companion was never seen after she had sex with him. It is a mystery up to know as to what happened to him. Victim admitted that she asked money from the accused after the incident. She confirmed this in her re-examination.

[08] The evidence of the victim clearly corroborates the defence version that she had sex with the accused for money. Further, after agreeing the proposal of the accused, the victim voluntarily came and sat on the carton where the

accused was seated. This clearly shows her consent for sexual intercourse with the accused on 26/12/2012. The offence of rape is made out only if there was no consent from the victim.

[09] It is the duty of the prosecution to prove the case beyond reasonable doubt. But in this case a serious doubt has been created. The benefit of doubt must be accrued to the accused.

[10] Therefore, I acquit the accused from the charge.

[11] 30 days to appeal.

P Kumararatnam
JUDGE

At Suva
28/03/2014