

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 24 of 2013

BETWEEN:

THE STATE

AND:

MELIKI NAMATEA

Counsel: Mr S. Vodokisolomone for State
Ms M. Tarai for Accused

Date of Hearing: 14-16 July 2014
Date of Judgment: 16 July 2014

JUDGMENT

- [1] The Accused, Meliki Namatea is charged with one count of rape, contrary to sections 207(1) and (2)(a) of the Crimes Decree. The charge alleged that the Accused on 21 August 2011 had carnal knowledge of the complainant without her consent.
- [2] The trial commenced on 14 July 2014. The evidence was concluded on 16 July 2014. The prosecution called two witnesses, the complainant and her mother, Akesa Buna. The Accused gave evidence in his defence.
- [3] After the summing up was delivered, the three assessors deliberated for thirty five minutes and returned with a unanimous opinion that the Accused is not guilty of the charge.
- [4] I direct myself in accordance with my directions contained in my summing up to the assessors. I bear in mind that the burden of proof is on the prosecution to prove the Accused's guilt beyond a reasonable doubt. Even though the Accused has given

evidence, he bears no burden to prove anything. It is for the prosecution to prove that the Accused had sexual intercourse with the complainant without her consent and he did so knowing she had not consented or was reckless as to whether she consented. All elements of the charge are in dispute.

- [5] The Court was presented with two different versions of facts. The prosecution version is that the Accused on 21 August 2011 at 11pm smothered the complainant's face with a pillow, removed her clothes forcefully, and had sexual intercourse without her consent. The episode lasted for five minutes. The complainant lost consciousness and when she woke up she found her clothes were folded and left beside her. The following morning the Accused threatened to kill the complainant if she complained to anyone. The complainant did not complain to anyone until 22 October 2011 when she told her mother, Akesa that the Accused had raped her.
- [6] The defence version is that on 21 August 2011, in the afternoon, the Accused had consensual sexual intercourse with the complainant in a cassava plantation. At 11 pm, the Accused was at home with his family members including the complainant. According to the Accused, the 11 pm episode as alleged by the complainant never occurred. The defence says that the complainant only cried out rape to her mother two months after the alleged rape because she knew she was pregnant from her boyfriend and that her mother would have been disappointed with her if she learnt about the pregnancy.
- [7] It is not in dispute that following her father's death, the complainant moved in to live with the Accused and his family in Naua to complete her high school education. In 2011, the complainant was nearly 18 years old and a Form 6 student. In June 2011, she developed a sexual relationship with a boy and fell pregnant. She gave birth to a child on 30 March 2012. So when the alleged rape occurred the complainant was two months pregnant. And when she complained about the alleged rape to her mother in October 2011, she was four months pregnant. The complainant concealed her pregnancy until 12 January 2012 when she was medically examined. When the complainant gave evidence in court, she struck me as an assertive witness. She gave evidence that she lost consciousness during the alleged rape and when she gained consciousness she found her clothes folded and left beside her. I find this evidence not

plausible. The alleged rape occurred in an open room which at the time was being occupied by all the household members. Even if I accept that the other household members were not at home at the time of the alleged rape, on the complainant's own testimony, the household members were attending a church service and would have returned home on that particular night. I find it implausible that the Accused would have exposed himself by leaving the complainant unconscious and naked after committing rape, knowing that his wife and other members of his household could return home at anytime.

- [8] I find the Accused's version of the facts more plausible. The defence version of the facts has created doubt in my mind in relation to his guilt. The doubt is reasonable and the benefit has to be given to the Accused.
- [9] For these reasons, I accept the unanimous opinion of the assessors that the Accused is not guilty of the charge. This Court finds the Accused not guilty of the charge of rape. The Accused is acquitted of the charge.


Daniel Goundar
JUDGE



At Labasa
16 July 2014

Solicitors:
Office of the Director of Public Prosecutions for State
Office of the Director of Legal Aid Commission for Accused