

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 98 OF 2013

STATE

-v-

1. JOSAI A NABOU
2. WAISALE NAMOKONINO
3. DANIEL VARO SMITH

Counsels : Mr. J Niudamu for the State
Ms. L. Jiuta for the 1st Accused
Mr. Anil J. Singh for the 2nd and 3rd accused

Date of Trial : 10 July 2014 to 15 July 2014
Date of Summing Up : 15 July 2014
Date of Judgment : 16 July 2014

JUDGMENT

1. The three Accused are charged under following counts:

COUNT 1

Statement of Offence

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

Particulars of Offence

JOSAI A NABOU on the 26th day of April 2013 at Nadi in the Western Division had carnal knowledge of **ESG** without her consent.

COUNT 2
Statement of Offence

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

Particulars of Offence

WAISALE NAMOKONINO on the 26th day of April 2013 at Nadi in the Western Division had carnal knowledge of **ESG** without her consent.

COUNT 3
Statement of Offence

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

Particulars of Offence

DANIEL VARO SMITH on the 26th day of April 2013 at Nadi in the Western Division had carnal knowledge of **ESG** without her consent.

2. The three assessors unanimously found each accused Guilty of the count against him.
3. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
4. Considering the nature of the evidence before the court, I am convinced that the prosecution had proved the case beyond reasonable doubt in respect of each accused.
5. Prosecution case was based on complainant's evidence. She explained to Court how she was attacked and raped by three young i-Taukei men. Her evidence was confirmed by her husband regarding recent complaint. Doctor had found an injury on her lip. Each accused in their caution interviews had admitted the offence. I have ruled earlier that these caution interviews were voluntarily made. I am of the view those are truthful.
6. I reject the version of each accused that they were beaten from the time of arrest till conclusion of the interviews. Their position is that they did not give any answers. The defence version is highly improbable and inconsistent.
7. I am satisfied that evidence is sufficient to establish the guilt of each accused beyond reasonable doubt.
8. In my view, the assessor's verdicts were not perverse. It was open for them to reach such conclusions on the evidence.

9. I accept the assessor's verdict and I find that the prosecution has proven its case against each accused beyond reasonable doubt in respect of count against him.
10. I find all accused Guilty as charged on the count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009 and convict them for each count against them.
11. This is the Judgment of the Court.




Sudharshana De Silva
JUDGE

At Lautoka
16 July 2014

Solicitors : Office of the Director of Public Prosecution
Office of the Legal Aid Commission for 1st Accused
Anil J Singh Lawyers for the 2nd and 3rd accused