

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 115 OF 2010

BETWEEN : STATE

AND : TALEMO BOLA

Counsel : Ms. P. Madanavosa for the State
Mr. M. Fesaitu for the Accused

Date of Hearing : 15th, 16th, 18th September 2014

Date of Summing Up : 19th September 2014

Date of Judgment : 23rd September 2014

JUDGMENT

1. Mr. Talemo Bola, the accused is been charged with the following counts of 'Rape' contrary to section 207(1) (2) (a) of the Crimes Decree No. 44 of 2009.

First Count

Statement of Offence

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

Particulars of Offence

TALEMO BOLA on the 29th day of May 2010 at Vunisea, Kadavu in the Central Division had carnal knowledge of F.V. without her consent.

Second Count
Statement of Offence

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

Particulars of Offence

TALEMO BOLA on the 29th day of May 2010 in a second incident separate from the first count at Vunisea, Kadavu in the Central Division had carnal knowledge of F.V. without her consent.

Third Count
Statement of Offence

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

Particulars of Offence

TALEMO BOLA on the 29th day of May 2010 in a third incident separate from the first and second counts at Vunisea, Kadavu in the Central Division had carnal knowledge of F.V. without her consent.

2. The three assessors, at the end of the trial, returned with the unanimous opinion of 'GUILTY' for all the above three counts.
3. I will now proceed to finalize the Judgment of court. According to Ms. F.V., she had been raped by the accused three times continuously within a time gap of approximately one hour. Ms. F.V. said that she was called to the computer lab by the accused whilst she was waiting to go for the dinner along with Ms. Lutuitewa, her cousin. The message had been passed to her by another two students, Lilivia and Wainikiti.

4. Ms. Lutuitewa's evidence was that it was Ms. F.V. who volunteered to go to the lab after seeing the accused going inside the lab and no student passed any message from the accused and in fact, they did not even meet Lilivio and Wainikiti.
5. On the face of it there is a clear contradiction between these two prosecution witnesses. This 'portion' of the sequence of events is vital as it is how the whole episode initiated. On the other hand Ms. Lutuitewa is Ms. F.V.'s cousin and no reason was pointed out as to why she contradicted Ms. FV's evidence.
6. Then it is worth to note the evidence pertaining to the alleged incidents took place inside the computer lab. Ms. F.V. told court at every time the accused made sure that she could not raise alarms or cries and in fact she could not make any alternative sounds as well because she was tired and the accused was on top of her body during all material times.
7. Ms. Mere Vakacoa Raione, the table leader of Ms. F.V.'s 'dining group' testified to the effect that when she along with Kalesi and Rigieta reached the computer lab looking for Ms. F.V., they heard some noises inside the lab and as soon as they heard it, they ran away. The girls had gone closer to the lab again with a torch. Ms. Raione had not seen anybody inside. She said that she shined the torch through the window closer to the last bench inside the lab. Ms. F.V. said that she was forced to lie down just after the last bench inside the lab. Then Ms. Lutuitewa said that when she went to the lab to see Ms. F.V. after dinner, she had heard a 'noise from inside like something shaking'.
8. All this shows that the existed environment in and around the computer lab was not that 'silent' as claimed by Ms. F.V. In fact, there were 'noises' coming out of the lab according to prosecution's own witnesses. One instance, according to Ms. Raione, the noises made them run away from the lab. In this context, is it possible to assume that Ms. F.V. could not make any alarms during the time in issue?

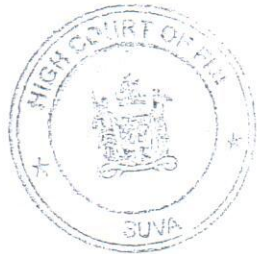
9. The third important point of the whole episode is the way Ms. F.V. came out of the lab. She said that the accused waited at the door until she got herself dressed up and came to the door. He had told her to stand up and wear the clothes before they are been caught. At the door he had told her not to tell anybody of what happened. She said she got "angry and frightened" when he said so.
10. Ms. Raione, who said that she waited in a dark place near to computer lab with other two girls, had only seen Ms. F.V. coming out of the lab by opening its door, smiling and trying to pull her skirt properly. She was very specific that the accused or anybody else did not come out of the lab with Ms. F.V.
11. Once again this is a material contradiction between two prosecution witnesses. If Ms. F.V.'s assertion is true, the accused should also come out of the lab along with Ms. F.V. But according to Ms. Raione it was only Ms. F.V. On top of that, Ms. F.V. was 'smiling and trying to pull her skirt properly' whilst coming out of the lab. The 'angry and frightened' claim of Ms. F.V. is also challenged by Ms. Raione's testimony.
12. The next chapter starts at the dormitory with Ms. F.V.'s revelation of her experiences in the lab with the accused. Ms. F.V. said that she told the incident only to Tokasa as she asked what happened inside the lab. But Ms. Lutuitewa told court that Ms. F.V. told 'everyone' in the dormitory that the accused made love bites on her neck, tried to remove her panty and told that he will make her pregnant. Basically, Ms. Tokasa Buka's testimony also confirms Ms. F.V. telling her that accused took off her clothes and made love bites on her neck. But, notably, Ms. F.V. had not told anybody about the alleged forced sexual intercourse with the accused, claimed to have happened not once but repeated for three times. She seems to have stopped half way of her experiences when described the "incident" to her friends. There is no evidence to say that Ms. F.V. was forced to narrate her experiences. She had volunteered to do so. In such a situation why she did not extend her "voluntariness" to say what happened to her as claimed in court?

13. Finally it comes to the reporting stage. Ms. F.V. agreed with the defence that she never wanted to report this incident and she was forced by Master Matai to do so. She said on the third time, she agreed with Master Matai to report the incident to police. Ms. F.V. further admitted that had Master Matai did not force her, she would not have told this to police. The defence witness, Mr. Poe, the Principal of the school during that time, said he did not report this to police, instead, informed the Ministry to follow the procedural steps against the accused as he was a public servant. But, he agreed that Mr. Matai reported the incident to police. In contrary, accused in his evidence claimed that Mr. Matai had a personal grudge with him and that is why he actively got involved to report the alleged allegation to police.
14. The reluctance of Ms. F.V. to report the alleged sexual allegations have to be viewed in a context where she volunteered to tell her colleagues as to what happened inside the lab. Then it has to be noted that Mr. Matai, another teacher of the school had admittedly forced her to report against the accused. Going a step further, Mr. Matai himself had reported the matter to police. What was the reason for Mr. Matai to go to that extent by passing Ms. F.V. and the school principal? If it was Mr. Matai who reported the matter to police, what was his exact complain? Was it on rape or some other accusation? Neither Mr. Matai nor the Investigating Officer was called to clarify these pertinent issues.
15. The only point which echoes in favour of Ms. F.V. is the so called "love bites" seen on her neck. The prosecution witnesses confirmed them seeing those. The Medical Examination Form had also noted the "love bites". Unfortunately, the assessors and the court did not have the privilege of having these "love bites" clarified from the doctor who examined Ms. F.V. This missed the opportunity to overrule the other possible ways of causing the injuries the doctor noted. In practicality, we have witnessed in court that the medical practitioners have various explanations to injuries. The prosecution did not seal the fact that these were "love bites" and so as the defence could not completely over rule that those were not "love bites". Thus, it would have been more desirable for both parties to get the clarification from the doctor without depending entirely on the Medical Examination Form. Nevertheless, all where these "love bites" take the prosecution case is, even at its highest level, that the accused made them on

her neck. That is what she had told to her hostel mates soon after the alleged incident.

16. It is in this context the contradictions highlighted above have to be analyzed. Did the accused actually call Ms. F.V. to the computer lab or she volunteered to go there? If the accused used force on her to prevent making any noises, what were the noises heard by the witnesses from the lab? If the accused was waiting at the door for Ms. F.V. to come, how did the witnesses miss him coming out of the lab along with Ms. F.V.? If there was no obstacle for Ms. F.V. to narrate her experiences to her friends in the dormitory, why did she stop at the point of 'tried to remove panty', 'removed the panty' and "made love bites", without disclosing the three sexual acts? What was the reluctance of Ms. F.V. to report the matter to police until she was been 'forced' by Master Matai? Why did Mr. Matai bypass the authority of the principal, who was liaising with the Ministry by that time over this allegation, and rushed to police after forcing Ms. F.V. to report the alleged incidents?
17. The cumulative effect of all the above anomalies focuses to the only conclusion that Ms. F.V. is not telling the truth to court. There cannot be such serious contradictions or lacunas, if she is narrating the truth. The disparities *inter se* and *per se* raise a reasonable doubt over the claim of the alleged victim. But, a careful analysis would reflect that her version lacks credibility for a trial court to be sure of her and the guilt of the accused.
18. This court stressed to assessors when delivering the Summing Up that they must not be prejudiced or sympathetic towards anybody or any party involved in this case. Simply because the alleged victim is a school girl and the accused is a teacher of the same school, the court is not supposed to be sympathetic towards the alleged victim or be harsh on the accused. The court or a criminal trial need to be a level playing field to both parties. What is sauce for the goose is sauce for the gander. The accused is of no disadvantageous position simply because he is been charged. He who avers must prove it beyond reasonable doubt against the accused.

19. In the light of the above, I am not inclined to accept Ms. F.V.'s version as true and convincing. Thus, pursuant to section 237 (4) of the Criminal Procedure Decree, the unanimous opinion of the assessors is overturned. Mr. Talem Bola is found "NOT GUILTY" for all three charges of 'Rape'. Mr. Bola is acquitted accordingly.



A handwritten signature in black ink, consisting of a large, stylized letter 'B' with a vertical line through it and a horizontal line extending to the right.

Janaka Bandara
Judge

At Suva

Officer of the Director of Prosecution for State

Office of the Legal Aid Commission for the Accused