

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 043/2013

BETWEEN : THE STATE

AND : MOHAMMED YUSUF

COUNSEL : Ms A Vavadakua for the State
Mr S Waqainabete and Ms F Bano for the
Accused

Dates of Trial : 01-02/12/2014

Date of Summing Up : 03/12/2014

Date of Judgment : 04/12/2014

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

JUDGMENT

[01] The Director of Public Prosecution had preferred the following charge against the above named accused.

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MOHAMMED YUSUF on the 22nd day of January, 2013, at New Town, in the Central Division, had carnal knowledge of **N.B.S** without her consent.

- [02] The assessors have expressed unanimous opinion that the accused is not guilty of charge of Rape. The unanimous opinion of not guilty verdict in respect of the charge is completely tenable on the basis of evidence considered in accordance with the legal directions that have been made.
- [03] In this case the victim took up the position that the accused had forcible sexual intercourse on 22/01/2013. On the following day she had reported the matter to the police and underwent a medical examination. In the history to the doctor she did not say that the accused had sex with her forcibly. Though she said that she bailed out the accused to look after the children but she left them and went away from the house. As per the bail condition the accused was not allowed to reside in the house. But victim went to social welfare and got the bail condition amended subsequently. After the amendment the accused had consultation with social welfare and obtained a Domestic Violence Restraining Order against her as she left the house leaving everybody. At present she is living elsewhere. The accused and the victim were in a defacto relationship for the last 18 years and they have 4 children.
- [04] The doctor gave evidence and submitted the Medical Report of the victim. Victim did not say that she was forced to have sex by the accused. No fresh hymeneal injuries noted by the doctor. According to the doctor nature of the incident always lead to fresh injuries in the vagina of the victim. Even though the victim is married and has children the doctor would have seen injuries in her vagina if the intercourse is forcible. But no fresh injuries were seen in the victim's vagina.

- [05] Accused in his evidence denied the charge. According to him the intercourse was consensual but not complete. The victim had sexual intercourse while seated on his lap. Though the victim said that she had done everything for the welfare of the children but she left them after the return of the accused from the remand. At present she is living elsewhere alone. According to the accused this is a sudden change of her life. She never behaved like this in their 18 years of married life.
- [06] I have considered and evaluated the evidence, applying legal principles contained in my summing-up to the assessors.
- [07] I have no reason to disagree with the unanimous not guilty verdict of the assessors. It is also my decision that the accused is not guilty of the charge of Rape.
- [08] The judgment of this court is that the accused is not guilty of charge of Rape of **N.B.S.** He is acquitted accordingly.
- [09] 30 days to appeal.



P Kumararatnam
JUDGE

At Suva
04/12/2014