

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No: HAC 10 of 2014

BETWEEN:

THE STATE

AND:

JESE KALOUNIVALU

Counsel: Mr. M. Delaney for State
Mr. M. Fesaitu for Accused

Date of Hearing: 19-20 & 22 December 2014

Date of Judgment: 23 December 2014

JUDGMENT

- [1] The Accused was tried on two counts of rape contrary to sections 207(1) and (2) (a) of the Crimes Decree. Before the commencement of trial, he pleaded guilty to a third representative count of defilement contrary to section 215(1) of the Crimes Decree. After the summing up was delivered, the assessors deliberated for fifteen minutes and returned with unanimous opinions that the Accused was not guilty of rape but guilty of defilement on count 1, and that he was not guilty of rape on count 2.

[2] On each count of rape, the prosecution was required to prove beyond reasonable doubt:

- (i) That the Accused had unlawful sexual intercourse with the complainant;
- (ii) That the complainant did not consent to the sexual intercourse or that the consent was obtained by force; and
- (iii) That the Accused knew the complainant did not consent or was reckless as to whether she consented.

[3] On count 1, the Accused admitted sexual intercourse but disputed lack of consent. His evidence was that in January 2013 he had consensual sexual intercourse, although he knew the complainant was under the age of 16 years. The complainant's account on count 1 was that the Accused entered her home uninvited and had sex with her using force. She said she was too afraid to complain to anyone about the incident. On count 2, the Accused admitted consensual sexual foreplay but denied sexual intercourse. His evidence was that the complainant left without having sex when they got distracted by an intervention. He admitted having consensual sex with the complainant on earlier occasions but not on 17 June 2013 as alleged on count 2.

[4] On both counts, the assessors must have accepted the accounts given by the Accused. Although the Accused's evidence is not entirely consistent with his caution statements, I bear in mind that he bears no onus to prove anything. If the prosecution's evidence satisfies the Accused's guilt beyond reasonable doubt then the proper verdict would be guilty of rape.

[5] On count 1, the prosecution case was based on whether the complainant's account of force being used to obtain consent was true. On count 2, the prosecution case was based on whether the complainant's account that the Accused had sexual intercourse without consent was true. The assessors' opinions mean that on count 1 they did not believe the evidence of the complainant on the issue of lack of consent, and on count 2 they did not believe her entire account. I share the same opinions that the assessors expressed. The complainant's accounts make me feel unsure that the Accused used

force to obtain consent as alleged on count 1 and that the Accused had forceful sexual intercourse as alleged on count 2. For these reasons, I accept the assessors' unanimous opinions that on count 1 the Accused is not guilty of rape but guilty of defilement and that on count 2 the Accused is not guilty of rape.

[6] The verdict of the Court is that on:

Count 1- The Accused is acquitted of rape but convicted of defilement contrary to section 215(1) of the Crimes Decree.

Count 2 – The Accused is acquitted of rape.

Count 3 – The Accused is convicted of defilement on his own guilty plea.


Daniel Goundar

JUDGE



At Labasa

23 December 2014

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused