

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 91 OF 2011

STATE

-v-

SENIRUSI RAUQE

Counsel : Ms. L. Latu for the State
The accused in person

Date of Trial : 16 February 2015-17 February 2015

Date of Summing Up: 18 February 2015

Date of Judgment : 19 February 2015

(Name of the victim is suppressed. She will be referred to as AS)

JUDGMENT

1. The Accused is charged under following count:

COUNT 1

Statement of Offence

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

Particulars of Offence

SENIRUSI RAUQE, between the 30th of April 2011 and the 1st of May 2011 at Vatutavui, Tavua in the Western Division had carnal knowledge of **AS** without her consent.

2. The three assessors unanimously found accused Not Guilty of the above count.

3. Obviously, the three assessors have not accepted the prosecution's version of events. It appeared that they have found the prosecution had not proven its case beyond a reasonable doubt.
4. I adjourned overnight to consider my judgment, I direct myself in accordance with the law contained in my summing up to the assessors.
5. I bear in mind that whilst the opinion of the assessors carries great weight, the verdict of the Court is that of the judge and it is his duty to reach his own conclusion on the evidence. (**Joseph v the King [1948] AC 215**). In **Ram Dulare & others v R [1955] 5 FLR 1** the Court of Appeal referred to Joseph's case and held:

'...[the assessor's] duty is to offer opinions which might help the trial Judge. The responsibility for arriving at a decision and of giving judgment in a trial by the [High] Court sitting with the assessors is that of the trial Judge and the trial Judge alone and ...he is not bound to follow the opinion of the assessors.'

6. More recently, in **Sakiusa Rokonabete v The State** Criminal Appeal No. AAU 0048/05, the Court of Appeal observed:

'In Fiji, the assessors are not the sole judges of fact. The Judge is the sole Judge of fact in views of the facts.'

7. If the presiding trial Judge disagrees with the opinion of the assessors, he must give written reasons for differing from the opinion and those reasons must be pronounced in open Court (Section 237 (4) of the Criminal Procedure Decree). The reasons for differing with the opinion of the assessors must be founded on the weight of the evidence and must reflect the presiding Judge's view as to the credibility of witnesses. (**Ram Bali v Regina** (1960) 7 FLR 80 at 83, **Ram Bali v The Queen** Privy Council Appeal No. 18 of 1961), **Shiu Prasad v Regina** (1972) 18 FLR 70 at 73. In **Setevano v State** [1991] FJA 3 at 5, The Court of Appeal stressed that the reasons of the presiding trial Judge:

'...must be cogent and they should be clearly stated. In our view they must also be capable of withstanding critical examination in the light of the whole of the evidence presented in the trial.'

8. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
9. The offence of Rape requires proof of the following elements:
 - (a) The accused
 - (b) Inserted his penis into the vagina of the complainant

(c) The complainant did not consent to that act and the accused knew that she was not consenting

10. The prosecution case was that the accused broke in the house of the 14 years complainant when she was sleeping at her house alone and forcibly inserted his penis into her vagina for 1 minute. She could not scream as the accused covered her mouth with a pillow. She had identified the accused with aid of the light from accused's mobile phone. The complainant had come out of the house crying covering herself only with a bed sheet and told Luke and mother, who came back from sea.
11. I observed the demeanor of this witness when she gave evidence. In my mind there is no doubt that she gave truthful evidence in Court. She was prompt in answering the questions put to her by the prosecution as well as defence. She was not evasive in her answers. She had told Luke and mother about the incident. In fact it was at the first available opportunity after the incident of Rape. The accused is a relative and a neighbor of the complainant. She had identified the accused with aid of the light in the mobile phone of the accused. The accused admits entering the house at the time in question. Therefore, there is no issue regarding identification. It was not suggested to her that she had a motive to falsely implicate the accused. There were some inconsistencies in her evidence with Waisake's evidence. However, considering the age of the complainant and her education level, these inconsistencies are insignificant.
12. The doctor had examined the victim on the next day and observed that there is redness around vulva and hymen is not intact. Her professional opinion was that the medical findings are consistent with the history given by the complainant.
13. The doctor is an independent witness. I believed her evidence. There is medical evidence of recent vaginal penetration. Further hymen is not intact. Doctor's professional opinion was that, medical findings are consistent with the history given by the complainant. The doctor's evidence had further strengthened the prosecution case.
14. The prosecution led evidence of Luke, complainant's mother and village headman. These witnesses were called by the prosecution to establish that the complainant made a recent complaint. Such complaint is not evidence of the facts complained of and cannot be regarded as corroboration, but goes to the consistency of the conduct of the complainant with her evidence given at the trial.
15. Last prosecution witness Waisake had come to complainant's house hearing someone screaming and waited outside for the accused to come out. He had seen the accused coming out of the house and identified him with aid of torch light.
16. After I explained the accused of his rights in defence accused elected to give evidence.

17. He stated that he drank Grog that night and consumed Alcohol. There were no matches. He went to house of the complainant in search of matches. The door was open. He entered the house. There was no light. He switched on his mobile phone light. He saw the complainant lying on the bed. He woke her up. She got angry and she shouted. Samu and Waisake were outside the house coming back from sea. After a while, complainant went to Luke and they came back and talked to him. Luke asked him what he was doing there. He told that he came looking for matches. He denied the allegation when police arrested him.
18. Under cross examination he stated that he admitted entering complainant's house around 4.00 a.m. He denied that he broke into the house. He said that he took off his flip flop and entered the house. He denied that he entered the house to rape the complainant. He was drinking on rail way beside the father's elder sister's house. He asked for matches from the aunt. She refused to give the lighter as he will lose it. He was looking for matches to light a cigarette. He had no idea whether he told police that the aunt refused to give the lighter. He only touched the back of the complainant to wake her up. He had hit a pig owned by complainant's mother with a knife in his farm. He did not tell this to police. He admitted entering the house but denied the allegation.
19. Accused did not deny entering the house of the complainant, his position is that he entered through the opened door looking for matches. He only touched back of the complainant to wake her up.
20. The version of the accused is highly improbable. The accused did not put his version to the prosecution witnesses. I reject the evidence of the accused as untrue.
21. I have considered both parties' evidence and witnesses, in order to discover the truth. I find the state witnesses credible, and I accept their evidence. I find the accused was not a credible witness, given the above. I reject his denials.
22. Considering the evidence before the Court which I extensively discussed in my summing up to assessors, I am convinced that there is ample evidence against the accused person to prove that he had committed the offence of rape as charged in the information.
23. For the reasons given, I do not accept the unanimous opinion of Not Guilty given by the assessors in respect of the count of Rape.
24. In my view, the assessor's opinion was perverse.
25. The learned DPP has satisfied me the guilt of the accused beyond reasonable doubt in respect of the count. Accordingly, I convict the accused for the count as charged.
26. This is the Judgment of the Court.




Sudharshana De Silva
JUDGE

At Lautoka
19th February 2015

Solicitors: **Office of the Director of Public Prosecution for the State**
The Accused in person