

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 099 OF 2012

BETWEEN : STATE

AND : REVONI RASILA

Counsel : Mr. S. Babitu for State
Mr. Kumar for the Accused Person

Date of Hearing : 23rd and 24th of June 2015

Date of Summing Up: 25th of June 2015

Date of Judgment : 25th of June 2015

JUDGMENT

1. The accused person is charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009. The particulars of the offence are that;

"Revoni Rasila on the 9th day of August 2012, at Lautoka in the Western Division, inserted his penis into the vagina of Torika Yamuna without her consent".

2. The accused person pleaded not guilty for this offence; hence the hearing of this action took place on 23rd and 24th of June 2015. The Prosecution called two witnesses during the course of the hearing. At the conclusion of the prosecution case, the accused gave evidence on oath but did not call any other

witnesses for the defence. Subsequently, the learned counsel for the Prosecution and the Defence made their respective closing submissions. I then delivered my summing up to the assessors.

3. The three assessors have returned with unanimous not guilty verdict against the accused person. The assessors' verdict was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having considered the evidence presented during the hearing, respective closing submissions of the prosecution and the defence, and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. Sections 207 (1) and 207 (2) (a) states that;

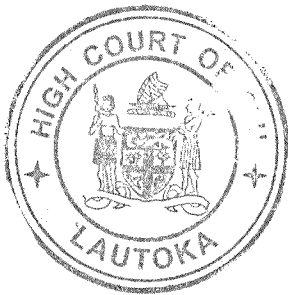
*"Any person who rapes another person commits an indictable offence.
A person rapes another person if-*
(a) the person has carnal knowledge with or of the other person without the other person's consent,
6. Accordingly, the main elements of the offence of rape are that;
 - i. The accused,
 - ii. Inserted his penis into the vagina of the complainant,
 - iii. Without the consent of the complainant, and
 - iv. The accused knew the complainant was not consenting for him to insert his penis in that manner.
7. The prosecution presented direct evidence of the victim, Torika and Makereta and tendered the copy of the medical report as documentary evidence.

8. In view of the evidence presented by the prosecution, it appears that the Victim, Torika and Makereta's version of meeting the accused at the outside of the club is contradicting the 4th items of the agreed facts tendered by the prosecution and the Defence. The Prosecution and the Defence has agreed that Torika and Makareta met the accused inside the Hunters' night club.
9. Moreover, the Victim said that Makareta proposed to go to Dark Angel's night club. However, Makereta stated in her evidence that the Accused told them that he has hid a bottle of rum at the back of the Dark Angel's night club. Torika did not say anything about the accused offering of buying or giving them a bottle of rum. She only stated that they went to the Dark Angel's night club to drink, but when they reached there, it was closing. The accused has asked Makereta to go inside the club and fil a bottle of water.
10. In contrast to the version of the Victim, Makerate stated in her evidence that they went to the Dark Angels club as Accused told them that he has hid a bottle of rum there. She went inside the club looking for an empty bottle to mix the drink.
11. The victim chose not to scream or ask for help when she was punched by the accused at the side of the night club, though she admitted in her cross examination that people were coming out from the club and bouncers were also at the entrance. She said that the accused threatened her that he will stab her and asked not to scream. However, the prosecution did not adduce any evidence to establish that the accused was armed with a knife or any offensive weapon. She was not forcefully drag to the back by the accused. The accused did not hold her and took her to the back. She walked down the passage to the back. She only ran away when she was asked to come on the top of the accused, when he was raping her.

12. I further consider the fact that the accused did not flee away in dark when the victim of rape ran away from him asking for help. The victim in her evidence stated that she did not know the accused before this incident. She came to know about his name after his arrest at the Police Station. Instead, he too followed her towards the direction she ran for help. The victim also admitted in her evidence that the accused followed her and informed the couple she found outside the club that she stole his wallet.
13. Moreover, the victim stated in her evidence that she fell backwards when the accused pushed him down. She got injuries on her elbow and back side. However, the doctor who conducted her medical examination on the same day has not found or reported such scratches or bruises in the medical report. She further stated in her evidence that it was a forceful penetration and she got cuts in her vagina. The medical report does not correspond such evidence of forceful penetration or injuries in the vagina of the victim.
14. In view of the evidence given by the accused, it appears that the defence is founded on the claim that the Victim and her friend approached him while he was drinking at the Hunters' night club. He was told by Makereta that if he paid for their drink and \$ 50, he can talk to Torika. He then went with them to Dark Angel's night club, where Makereta went inside the club leaving him and the victim outside. The victim suggested and told him that he can have sex with her at the backside of the club. When he lied naked, the victim came top of him and then grabbed his wallet from his pants and ran away. He vehemently denies this allegation.
15. Having considered the nature and the quality of the evidence adduced during the course of the hearing, it appears that the contradictory and inconsistency nature of the evidence of Torika and Makereta has rendered the prosecution's

case unreliable. The evidence of the accused has then created a reasonable doubt in the allegation of the prosecution. Accordingly, it is my opinion that the Prosecution has not proved this charge against the accused beyond reasonable doubt. I accordingly do not find any cogent reason to disagree with the unanimous non guilty verdict of the assessors.

16. I accordingly find the accused is not guilty for the offence of Rape as charged in the information and acquit him accordingly.
17. 30 days to appeal to the Fiji Court of Appeal.



At Lautoka
25th of June 2015

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

R. D. R. Thushara Rajasinghe
Judge

Solicitors : Office of the Director of Public Prosecutions
The Legal Aid Commission, Lautoka Office