

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 160 of 2012

STATE

v.

JOSEVA VUETI

Counsel: Mr. Y. Prasad and Ms. V. Prasad for State
Mr. W. Nainima and Mr. P. Tawake for Accused

Dates of Hearing: 13th and 14th July 2015

Date of Summing Up: 15th July 2015

Date of Judgment: 16th July 2015

JUDGMENT

1. The accused is charged with the following offence:

Charge

Rape: Contrary to section 207 (1) and 207 (2) (a) of the Crimes Decree, No. 44 of 2009.

Particulars of Offence

JOSEVA VUETI between the 17th day of December 2011 and 18th day of December 2011 at Natogadravu Village, Nausori in the Central Division, had carnal knowledge of **SISILIA LEDUA** without her consent.

2. After trial three assessors unanimously opined that the accused is not guilty of the offence.
3. I direct myself in accordance with my summing up and the evidence adduced at the trial.
4. The elements the prosecution has to prove beyond reasonable doubt to find the accused guilty are:
 - 1 The accused had carnal knowledge of the complainant,
 - 2 Without her consent,
 - 3 He knew or believed that she was not consenting or did not care if she was not consenting.
5. In her evidence the complainant said when she was sleeping accused woke her up to have sex with her and when she said 'No' because she was feeling weak, he forcefully removed her clothes and they had sex.
6. The accused was her de-facto partner and they were living together. Mother and the niece of the accused had been sleeping in the other room.
7. The caution interview statement and the charge statement were admitted as evidence by consent of the parties.
8. Medical evidence revealed that she had an ectopic pregnancy. The doctor's evidence was that she cannot rule out sexual assault and also that she cannot say there was forceful sex. The defence taken up by the accused was that he had consensual sex with the complainant. When the complainant was taken to the Nausori hospital when she was asked by the doctors and the nurses as to what happened, she had not told them that accused had sex forcefully with

her according to her statement to police. She was inconsistent in her statement to police and the evidence in court.

9. In his caution interview statement accused had said that he did not know that the complainant was pregnant and that he did not hear complainant saying that she didn't want to have sex.
10. In his charge statement he said that he did not know that the complainant was sick. It was suggested by the defence that the complainant was embarrassed to tell that she had the miscarriage after having consensual sex and therefore she fabricated the story when she found that there was a miscarriage, and that is why she did not mention this to doctors and nurses at Nausori hospital.
11. On all the evidence taken together including the inconsistency mentioned above I find that the assessors were entitled to come to the conclusion that the complainant and the accused may have had consensual sex and that the accused believed that the complainant was consenting.
12. I find that the prosecution has failed to prove the element of absence of consent beyond reasonable doubt.
13. Hence I accept the unanimous opinion of the assessors that the accused is not guilty as charged. I acquit the accused accordingly.




Priyantha Fernando
Judge

At Suva

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for Accused.