

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 230 OF 2011

BETWEEN : STATE

AND : VATEMO RAVOUVOU

Counsel : Mr. A. Singh for State
Accused in person

Date of Hearing : 22nd- 24th of July 2015

Date of Summing Up: 24th of July 2015

Date of Judgment : 24th of July 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;

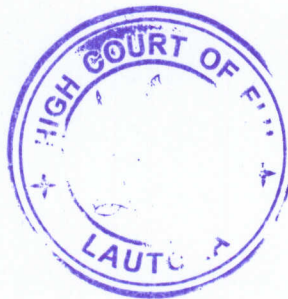
“Vatemo Ravouvou on the 18th day of November 2011 at Nadi in the Western Division had carnal knowledge with Ateca Saubuli without the consent of the said Ateca Saubuli”.


2. The accused person pleaded not guilty for this offence; hence the hearing of this action took place on 22nd, 23rd and 24th of July 2015. The prosecution called six 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 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 victim,
 - iii. Without the consent of the victim, and
 - iv. The accused knew the victim was not consenting for him to insert his penis in that manner.

7. The prosecution presented evidence in the form of direct, expert and documentary evidence. The victim and the two other civilian witnesses gave direct evidence and the doctor gave expert evidence about this incident. The prosecution tendered the medical report as documentary evidence.
8. In view of the evidence adduced during the course of the hearing, there is no dispute that the accused was in the drinking party with the victim, Meri and Koliova. However, Meri and Koliova left the place leaving the accused and victim alone. The victim in her evidence stated that she clearly saw the face of the accused when he came on top of her. It was the daylight. She then identified the accused at the identification parade. The two police officers who gave evidence for the prosecution confirmed that the identification parade was conducted in fairly and proper manner and the victim and first witness of the prosecution positively identified the accused.
9. The victim in her evidence stated that the accused inserted into her vagina with his penis. The Accused in his evidence denied it. The Doctor in her evidence stated that she observed blood in her undergarment and injuries around the vulva of the victim. She formed her opinion that the injuries would have caused by unconsented sexual intercourse or by a blunt object. The victim further stated that she did not consent for the accused to have sexual intercourse with her. She tried to push him away and shouted for help. She had struggled but was over powered by the accused.
10. The investigation officer in his evidence stated that he observed the place of this incident. He further confirmed that it would be difficult for a person on the main road to hear properly if someone shouted for help from the place of this incident took place.

11. The accused in his evidence denied this allegation, though he admitted that he was with the victim and other two friends of her in that early morning of 18th of November 2011. He stated in his evidence that he also left the place after two friends of victim left, leaving the victim. He stated that he then went to Nadi Magistrate court to meet his brother as he had a case on that day. However, I find that 18th of November 2011 was a Sunday.
12. Having considered the evidence of victim, the medical observation and opinion of the doctor, and the accused, I refuse the evidence of accused. I also find that his evidence has failed to create any reasonable doubt in the prosecution case. Upon considering the nature and the manner of the evidence presented by the prosecution, I hold that the prosecution has proved guilty of the accused person beyond reasonable doubt. Accordingly, I do not find any cogent reason to disagree with the unanimous guilty verdict of the assessors.
13. I accordingly find the accused is guilty for the offence of rape contrary to section 207(1) and 207 (2) (a) of the Crimes Decree and convict for the same.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka

24th of July 2015

Solicitors : Office of the Director of Public Prosecutions
The Accused person,