

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 178 of 2014

STATE

v.

SOKONAIA NAKULA

Counsel: Mr. M. Vosawale with Mr. S. Seruvatu for State
Ms. N. Mishra for Accused

Hearing: 29th, 30th March 2016

Summing Up: 31st March 2016

Judgment: 01st April 2016

JUDGMENT

1. The accused is charged with the following offences:

Count One

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SOKONAIA NAKULA on the 15th of May 2014, at Suva in the Central Division, penetrated the vagina of **NAINASA VAKALUMA** with his finger without her consent.

Count Two*Statement of Offence*

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SOKONAIA NAKULA on the 15th of May 2014, at Suva in the Central Division, unlawfully and indecently assaulted **NAINASA VAKALUMA**.

2. After trial the 3 assessors unanimously opined that the accused is guilty of Count No. 2 and the majority of the assessors opined that the accused is guilty of Count No. 1.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at the trial.
4. For the prosecution the complainant gave evidence and the accused gave evidence for the defence.
5. The undisputed facts are that the complainant, her husband and their 3 children were living in the accused's house. On the day of the incident, the complainant's husband had been away at sea fishing, and the wife of the accused had been away in Lautoka. It is unchallenged evidence that the incident took place on 15/05/2014 at about 1.00am and only the accused, complainant and her 3 children had been at home.

6. The evidence of the complainant was that, at about 1.00am when she was breast feeding her child, the accused had come to her room and had laid beside her. He had told her that he wanted her. The complainant had said that it cannot happen as they both were married. Accused had ignored that and had started touching her breasts and had pulled her 'sulu'. He had pulled her to his room and had taken her 'sulu' off. He had touched her breasts, vagina and inserted his fingers into her vagina. He also had licked her vagina.
7. It is an agreed fact that the accused licked the complainant's vagina and touched her breasts.
8. In his evidence the accused said that the way the complainant acted in the house and the way she dressed attracted him. He had waited for the opportunity to put his heart out and when his wife and complainant's husband were away, he had told her that he wanted to have sex. He said that she agreed and came to his room. He said that he licked her body, breasts and vagina and kissed her. However, he denied inserting his finger into her vagina. He said that the complainant was a willing partner to the said sexual acts. When he wanted to have sexual intercourse, complainant had said that she was 2 months pregnant. Then he had respected her decision and asked her to dress up and go to her room.

9. On the above evidence, the only element in dispute in Count No. 2 is consent. Whether the complainant consented to the said acts and whether the accused knew or believed whether she was not consenting.
10. The accused also denied inserting his finger into her vagina. Therefore on Count No. 1, penetration of his finger into the complainant's vagina is also disputed.
11. The complainant has signed the letter exhibited as 'D1'. She said that the wife of the accused forced her to sign and that she did not know the contents when she signed. The letter 'D1' is addressed to DPP and amongst other things it says that the accused never raped her nor he forced her. It is not in dispute that the letter was not written by the complainant and it was brought to her by the accused's wife.
12. On considering the contents of the letter 'D1', obviously the assessors would have found that the complainant was made to sign the letter to get the accused out of the case against him. Circumstances have forced her to sign the letter.
13. I also take into consideration when deciding on the credibility of the complainant, the inconsistency that was evident between the complainant's evidence in court and her statement to police. In her statement to police the complainant had not mentioned that she was dragged into the accused's room. I observed the demeanour and deportment of the complainant and I find that she was truthful when

she said that she never consented to the sexual acts committed by the accused and also that the accused penetrated his fingers into her vagina without her consent. The complainant had reported the matter to the police next day itself and there was no reason for her to make a false complaint against the accused when she and the children were sheltered by the accused. Her husband was also away from home.

14. It was suggested by the defence counsel when cross examining the complainant, that she reported the matter to the police because she realised better to be recognized as a victim rather than a woman who had willingly cheated her husband. I find that the suggestion is highly improbable in the circumstances. If the complainant did not report no one else would have known about the incident. The complainant could have easily kept it a secret if she consented and if she was a willing partner. I find that the accused was not truthful when he said that he did not insert his fingers into her vagina and that the complainant consented to the sexual acts. He had taken the advantage of the vulnerability of the complainant when she was alone at home and when she had no way to leave the house leaving her small children. Her not screaming and not running out of the house to the neighbours at 1.00am cannot be taken as she consented to the acts the accused committed.
15. In the above premise I find that the prosecution has proved all the elements of the offences of Rape and Sexual Assault in Counts No. 1 and 2 respectively beyond reasonable doubt.

16. Therefore I agree with the majority opinion of the assessors that the accused is guilty of the offence of Rape and the unanimous opinion of the assessors that the accused is guilty of Sexual Assault in Count No. 2.
17. Hence, I find the accused guilty on Counts No. 1 and 2 and convict him on both counts accordingly.




Priyantha Fernando
Judge

At Suva

01st April 2016

Solicitors

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