

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 013 of 2015

STATE

v.

ERNEST PETUELI

Counsel: Mr. Y. Prasad with Ms. S. Serukai for State
Mr. M. Fesaitu for Accused

Dates of Hearing: 4th, 5th, 6th, and 7th April 2016

Date of Summing Up: 8th April 2016

Date of Judgment: 11th April 2016

JUDGMENT

1. The accused is charged with the following offence:

First Count

Statement of Offence

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

Particulars of Offence

ERNEST PETUELI on the 19th day of December 2014, in Nausori, in the Central Division, penetrated the vagina of **SERALYN NAWACIONO**, without her consent.

2. After trial 3 assessors unanimously opined that the accused is guilty of the offence. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at the trial.
3. For the prosecution, the complainant, the police officer who arrested the accused and the doctor who examined the complainant gave evidence. Accused gave evidence in his defence.
4. It is an undisputed fact that the complainant and her sister had been drinking alcohol with the accused and some others behind MH Supermarket. Complainant's evidence is that the accused had tried to touch and kiss the complainant which she did not like. Complainant had then gone to 'Blackzone' and then with her sister and others had continued to drink at Syria Park.
5. Accused had joined them again. The complainant had laid down on the grass. Then the accused had lifted her and had thrown her to the Rewa River. When the complainant screamed, her sister had come for help. However, the accused had pushed her and come down to the river to the complainant. She had been wearing a mini dress. When the

complainant was screaming for help the accused had pulled her panty down and inserted his finger into her vagina. This has happened for about 15 – 20 minutes. Then the complainant had kicked the accused when she got the chance and had started swimming. She was pulled out of the river by 3 other girls, she said.

6. She said that it was painful when the accused inserted his finger into her vagina.
7. The accused in his evidence admitted drinking with the complainant and the others. He said that the complainant fell into the river and that he jumped to the river to save her. He said that he had to struggle to save his life as the complainant held on to her at the river. He had escaped from the complainant and had come to the shore and had slept. When he heard a noise of some people shouting, he had again gone to the water as he panicked. He said that he panicked because he thought that those people would do something to him for saving the complainant.
8. The medical doctor who examined the complainant the following day gave evidence and produced the medical examination form in evidence. There had been a bruise in the complainant's vaginal vault and the doctor said it could have caused by penetration. It had been painful for the complainant when the vaginal area was touched. The medical report says that the injury was recent.

9. The complainant was consistent in her evidence right through out. I bear in mind that there was an inconsistency in her evidence and the statement to the police where she had omitted to tell the police that her panty was pulled down by the accused in the river. In her evidence in court she made it clear that she had not told that part to the police. From the place of incident, she was straight away taken to the police station that night and her statement was taken the following morning. I find that this inconsistency does not affect her credibility.
10. I find that her evidence was consistent, straight forward and truthful. Doctor's evidence further supports the claim of the complainant that there had been forceful finger penetration.
11. I observed the demeanour of the accused and he was evasive when giving evidence. He said that when he heard the people shouting, he went again to the water as he panicked. He has panicked thinking that the people would do something to him for saving complainant from the river. It is highly improbable that the people around would do any harm to the accused if he saved her from drowning. Obviously the accused went back to water as he panicked, but he did so because he knew what he did to the complainant. I find that the version of the accused that he jumped to the river to save the complainant and that he did not insert his fingers into her vagina is far from the truth.

12. I find that the prosecution proved beyond reasonable doubt that the accused penetrated his finger into the complainant's vagina without her consent and that he knew that the complainant was not consenting.
13. Therefore I agree with the assessors's unanimous opinion that the accused is guilty of Rape as charged. I find him guilty of the offence and convict him accordingly.



At Suva

11th April 2016

Solicitors

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

A handwritten signature in black ink, appearing to be "Priyantha Fernando".

Priyantha Fernando
Judge