

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 23 of 2015

STATE

V

SERUVATU SAUVUNI RATUVA

Counsel: Ms. W. Elo for State
Mr. P. Lomaloma for Accused

Dates of Hearing: 20, 21, 22 April 2016
Date of Judgment: 22 April 2016

JUDGMENT

[1] The accused was tried in this Court on the following count:

Statement of Offence:

RAPE: Contrary to section 207(1) and 2(a) of the Crimes Decree 44 of 2009.

Particulars of Offence

SERUVATU SAUVUNI RATUVA on the 25th day of September 2014 in Taveuni, Northern Division had

carnal knowledge of **ROSANA VALELALA** without her consent.

- [2] After trial the three assessors returned with 2 expressing an opinion of not guilty and 1 expressing the opinion of guilty.

The Evidence

- [3] The evidence at trial was brief and much time was wasted with examination and cross examination on irrelevant issues.
- [4] The complainant gave evidence that she was raped by the accused on the 25th September 2014 after they had both attended a prayer meeting.
- [5] On the 31st March 2015 after discovering she was 29 weeks pregnant she reported the alleged rape to the Police.
- [6] The accused and his family were close neighbours of the complainant and she was treated as one of the family, frequently visiting them.
- [7] After the accused was arrested the complainant went to the family asking for forgiveness for the wrong she had done to the family, wrong in reporting the rape. She nevertheless told the Court that although she was wrong to report it, she was nevertheless raped by the accused.
- [8] The accused gave alibi evidence in accordance with an alibi notice served in time. He said that he had gone to Savusavu for a funeral on 11 September and had stayed on there until early December. As a result he wasn't in Taveuni on September 25, 2014.

[9] He called his father and two friends from Savusavu to support his alibi.

Analysis

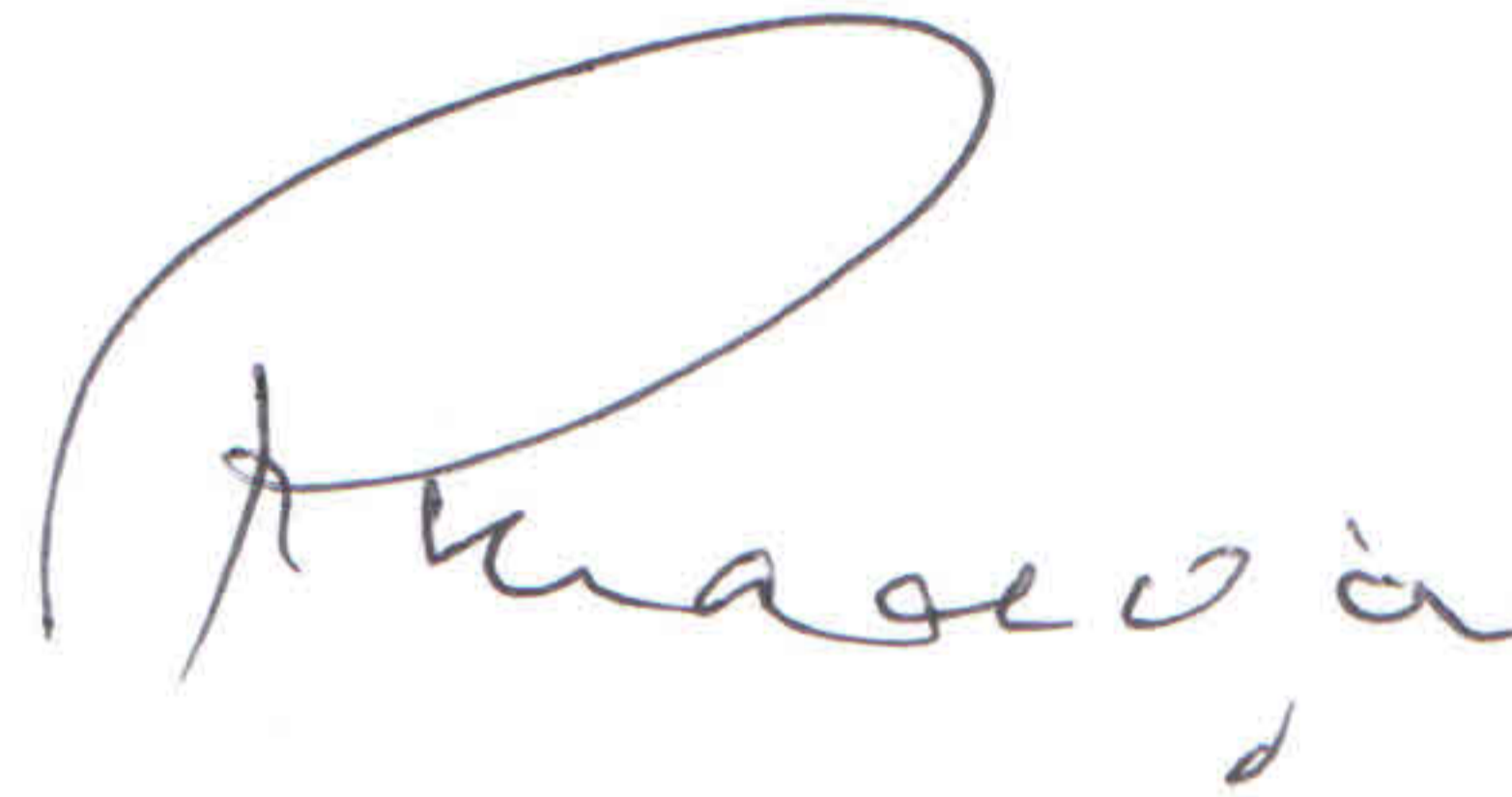
[10] I must state at the outset that I did not believe the accused's alibi evidence. It was obvious that the father had been "coached", he forgetting his "lines" from time to time. He referred to evidence that he had heard in "the lawyers' office" without expressing any personal knowledge of his son's whereabouts.

[11] The two friends, (a husband and wife) contradicted each other on a very material fact leading the Court to disbelieve them both.

[12] Of course disbelief in the accused's evidence does not make him guilty and the Court then must examine the prosecution case to determine if they have proven their case to the required standard.

[13] The Court was troubled by the late report of the rape. After the alleged rape the pair were seen at a dinner in his parents' house and they were seen to be acting normally, talking and laughing. It was only on discovering that she was pregnant, that she thought to report the matter. I am aware that lateness of report does not necessarily detract from an allegation of sexual assault but in this instance, when a contemporaneous apology is made to the family because of her stated feelings of guilt, there is a reasonable doubt raised in the Prosecution case.

- [14] Despite not believing the alibi evidence, the Court does not believe the prosecution proved the case to the required standard.
- [15] As a result the Court accepts the majority opinions of not guilty and finds the accused not guilty.
- [16] He is acquitted and discharged.
- [17] That is the judgment of the Court.



P.K. Madigan

Judge



At Labasa
22 April 2016