

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 112 OF 2013

BETWEEN : STATE

AND : PECELI TAUBULA SENIBUA

Counsel : Ms. J. Fatiaki for State
Ms. Ratu for the Accused

Date of Hearing : 31st of May - 1st of June 2016

Date of Closing Submissions : 1st of June 2016

Date of Summing Up : 2nd of June 2016

Date of Judgment : 6th of June 2016

JUDGMENT

1. The Accused is charged with two counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offence are that;

First Count

"Peceli Taubula Senibua on the 15th day of May 2013 at Sigatoka in the Western Division inserted his penis into the vagina of Merelita Seniuci without her consent"

Second Count,

"Peceli Taubula Senibua on the 15th day of May 2013 at Sigatoka in the Western Division inserted his penis into the vagina of Merelita Seniuci without her consent"

2. The Accused person pleaded not guilty for these two counts, hence the matter was proceeded to hearing. The hearing commenced on 31st of May 2016 and concluded on the 1st of June 2016. The Prosecution called three witnesses in order to prove the charges against the accused person. At the conclusion of the prosecution's case, the court found that there is no evidence that the accused person committed the second count pursuant to Section 231 (1) of the Criminal Procedure Decree. Hence, the court found the accused is not guilty for the second count.
3. In respect of the first count, the accused person gave evidence and called one witness for his defence. Subsequently, the learned counsel for the defence and the prosecution made their respective closing submissions. I then sum up the case to the assessors. The three assessors returned with a unanimous opinion of guilt of the accused.
4. Having considered the evidence adduced during the hearing, the respective closing submissions of the counsel, the summing up and the opinion of the three assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused person came to the victim, while she was weeding at the cassava plantation on the morning of 15th of May 2013. He then punched on her face and squeezed her hand. He grabbed the cane knife that she was holding in her hand. He then punched on her tights. She fell down on the ground. He threatened her that he will chop her neck if she shouted. He then tore her skirt and removed her undergarment. Having done such, he inserted his penis into her vagina and had a sexual intercourse. She could not shout as she was threatened by the accused. It lasted for about two to three minutes. He then

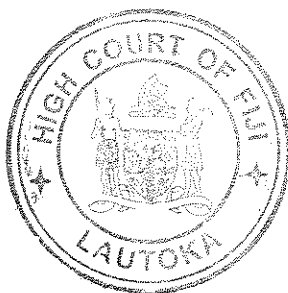
got up and walked away. She then went to the nearby creek and cleaned herself. She went home and told her mother what the accused did to her. Her grandfather then called the police and reported the matter. She was medical examined on the same day at the Sigatoka hospital.


6. The accused person denies the allegation and contended that at the time of this alleged incident took place, he was hunting pigs at the mountains with a group of people. He admitted that he met the victim in the morning when she was walking on the foot path in front of his house. He had greeted her. She then went to Kalesi's house. While she was still at the Kalesi's house, he went to pig hunting with other men. He said that he went with his dogs. He walked behind the others who were on horseback. He was about 500 meter behind the rest of the hunters. The Witness of the defence gave evidence to confirm that the accused went to hunting of wild pig with him and others on the 15th of May 2013.
7. In view of the evidence adduced by the parties, it appears that the prosecution case is mainly founded on the evidence of recognition by the victim.
8. The victim stated in her evidence that the accused is related to her from her mother's side. She had seen him before at her step- father's place. He lives close to her mother's house. The accused has greeted her when she was passing his house on her way to the farm on that morning. He then asked her where she was going. He told her that he will come later. The accused in his evidence did not dispute that he met the victim on that morning in front of his house and greeted her.

9. The victim then stated that she felt a punch on her face while she was weeding at the cassava plantation. She turned back and recognised that it was the accused who punched her. He was with his dogs. The accused person in his evidence stated that he went to pig hunting with his dogs. His face was very close to her while he was on top of her and had sexual intercourse with her. It lasted for about two to three minutes. The victim said that it was sunny morning.
10. The learned counsel for the accused person suggested to the victim during her cross examination that the accused could not have been committed this crime as he was hunting wild pigs. The victim answered that it was Peceli as she saw his face. The learned counsel then put to the victim that she made this allegation that it was Peceli who raped her because he was the last person she spoke with before she was punched on her face. The victim again answered that she saw his face and it was Peceli.
11. The victim has told her mother about the incident that she met at the farm. The mother of the victim stated in her evidence that the victim told her that it was Peceli who raped her at the farm. She noticed that the victim had a black eye and her thighs were injured. I find the evidence of recent complain is compatible with the evidence of the victim.
12. The accused in his evidence stated that he walked about 500 meters behind the others who were on horseback when they were going to pig hunting. However, Mr. Alipate, the witness of the defence stated that the accused was right behind them and not 500 meters behind them. The Accused admitted that they had to walk through some farm on their way to the mountains but not the farm of the victim. He knew the victim was alone at the farm.

13. In view of the evidence of the victim, I find that she knew the accused very well. He has talked to her on her way to the farm. She recognised him when she turned back after she felt a punch on her face. He was very close to her while he was on top of her. Hence, I find that the evidence of recognition of the accused person by the victim is credible and reliable. Moreover, I find the victim was straight when she gave her evidence. She was not evasive. Accordingly it is my opinion that the evidence of the victim is trustworthy, probably and credible. Hence, I accept the evidence of the victim.
14. I do not find the evidence of alibi of the accused person as credible and reliable evidence. Moreover, I do not find the defence has created any reasonable doubt on the prosecution case. Accordingly, I find that the prosecution has proven beyond reasonable doubt that the accused person is guilty for this offence. Hence, I do not find any cogent reasons to disagree with the unanimous opinion of guilt given by the three assessors.
15. In conclusion, I hold that the accused person is guilty for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree and convict him accordingly.

At Lautoka
6th of June 2016




R. D. R. Thushara Rajasinghe
Judge

Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission