

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 88 OF 2013

BETWEEN : STATE

AND : AMINIASI MASEI

Counsel : Mr. S. Babitu for State
Miss. S. Nasedra for the Accused

Date of Hearing : 12th of July 2016

Date of Closing Submissions : 13th of July 2016

Date of Summing Up : 14th of July 2016

Date of Judgment : 15th of July 2016

JUDGMENT

1. The name of the victim is suppressed. The victim is referred to as AB.
2. The Accused is being charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offence are that;

"Aminiasi Masei on the 6th of March 2013 at Lautoka in the Western Division, inserted his penis into the anus of AB, without the consent of the said AB"

3. The accused pleaded not guilty, hence the matter proceeded to hearing. The hearing was commenced on 12th of July 2016 and concluded on the 14th of July 2016. The prosecution adduced the evidence of the victim, his mother and the investigation officer. At the conclusion of the case of the prosecution, the accused gave evidence on oaths. However, he opted not to call any other witnesses for his defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing submissions, followed by the summing up.
4. The three assessors returned with unanimous opinion of guilt. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
5. Having carefully considered the evidence adduced during the hearing, respective closing submissions of the counsel, the opinion of the three assessors and the summing up, I now proceed to pronounce the judgment as follows.
6. The prosecution alleges that the accused came and pulled the victim into the sugar cane field, while the victim was walking back after the nature's call. The accused then forced the victim to remove his pants. The accused then inserted his penis into the anus of the victim. In contrast, the accused claims that he does not know anything of this matter and completely denied this allegation. The prosecution and the defence agreed that the accused and the victim are known to each other. Accordingly, the case of the prosecution is mainly founded on the issue of identification of the accused by the victim as the person who inserted the penis into his anus at the sugar cane field.

7. The learned counsel for the defence suggested that the lateness in complaining this matter to the parents by the victim makes it less likely that the complaint that he eventually made was true. The evidence adduced by the victim and his mother reveal that the victim had informed his mother about this incident after about four weeks of the incident. The victim in his evidence stated that the accused told him not to tell anyone. He further stated that he started to have troubles in his sleeping as this incident regularly came to his mind. He then decided to tell his mother.
8. I am mindful of the fact that victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the nearest person they see. Others, who react with shame or fear or shock or confusion, or perhaps due to cultural taboos, do not complain or go to authority for some time. It takes a while for self confidence to reassert itself. A late complaint does not necessarily constitute a false complaint. The victim was a 15 years old boy at the time of this alleged incident took place. It is obvious that this incident has brought a terrifying experience into the life of the victim. Having considered the post-incident behaviors of the victim as explained in his evidence, it is my opinion that the delay of informing his parent of this incident has not adversely affected the credibility and reliability of the evidence given by the victim.
9. During the cross examination the learned counsel for the defence suggested to the victim that the 6th of March 2013 was not a Saturday and it was actually a Wednesday. The victim in his evidence replied that he could not recall it. However, the victim in his re-examination affirmed that he was not in school on the day this alleged incident took place. Hence, I do not find the accuracy of the

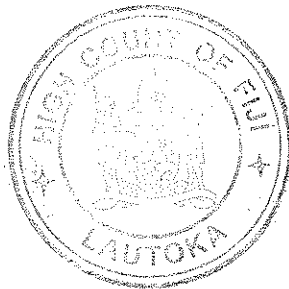
date of this alleged incident has significantly affected the credibility of the evidence given by the victim.

10. According to the evidence given by the victim, he saw the accused while he was walking back after the nature's call. The accused then pulled him in to the sugar cane field by his collar. He then told him to remove his pants. He saw the accused unzipping his trouser and putting his penis out. He then saw the accused inserted his penis into his anus when he looked back at the accused. It is an agreed fact that the accused and the victim are known to each other. In view of these evidence, I am satisfied that the victim has correctly identified the accused as the person who inserted the penis into his anus at the sugar cane field.
11. I now turn onto the issue of inconsistency of the evidence given by the victim with his statement made to the police in respect of meeting the accused at the sugar cane field. According to the statement made to the police, the victim has said that he saw the accused and he asked him to wait. He then waited. The victim in his evidence stated that he saw the accused. The accused then pulled him into the sugar cane field by his collar. Having considered all the evidence presented during the hearing, I do not find the inconsistent nature of the evidence of the victim with his statement made to the police into the effect of meeting the accused has affected the credibility and reliability of the evidence of the victim.
12. Having considered the forgoing reasons, I find the evidence given by the victim is credible, probable and reliable. Hence, I accept the evidence of the victim as truth. Accordingly I find the evidence given by the accused and his complete

denial of the allegation is untrue. Hence, I do not accept the evidence of the accused person. Furthermore, I find that that the defence has failed to create any reasonable doubt about the case of the prosecution.

13. Accordingly, I do not find any cogent reasons to disregard the unanimous verdict of guilt given by the three assessors. Hence, I find the prosecution has proven beyond reasonable doubt that the accused is guilty for this offence as charged
14. In conclusion, I hold that the accused is guilty for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree and convict to the same accordingly.

At Lautoka
15th of July 2016



R. D. R. Thushara Rajasinghe
Judge

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