

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 235 of 2014

STATE

v.

USAIA BUSELE RADIRIKI

Counsel: Mr. M. Vosawale for State
Ms. T. Kean for Accused

Hearing: 13th and 14th February 2017

Summing Up: 15th February 2017

Judgment: 16th February 2017

JUDGMENT

1. The name of the victim is suppressed. Accordingly the victim is referred to as AA.
2. 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

“Usaia Busele Radiriki on the 13th day of July 2014 at Delainavesi in Lami in the Central Division, had carnal knowledge of AA without her consent.

Second Count

“Usaia Busele Radiriki on the 13th day of July 2014 at Delainavesi in Lami in the Central Division on an occasion after that which is referred to in count 1, had carnal knowledge of AA without her consent.

3. The accused pleaded not guilty for these two counts. Hence, the matter proceeded to hearing. The hearing commenced on the 13th of February 2017 and concluded on the 14th of February 2017. The prosecution adduced the evidence of two witnesses, including the victim. The Defence then called the evidence of the accused, but did not call any other witnesses. The learned counsel for the Prosecution and the Defence then made their respective closing submissions. Subsequently, I sum up the case to the assessors.
4. The three assessors returned with unanimous opinion of guilt for the both counts.
5. Having carefully considered the evidence adduced in the hearing, respective closing submissions of the learned counsel, the summing up and the opinion of the three assessors, I now proceed to pronounce my judgment as follows.
6. The Prosecution alleges that the accused came into the house of one Eseta, while the victim was sleeping therein. He then forcefully removed her clothes and had sexual intercourse twice without her consent.
7. Having denied the allegation of the prosecution, the defence admitted the first sexual encounter as a consensual sexual intercourse. The accused claims that while they were having sexual intercourse, Eseta came into the house.
8. Accordingly, the main dispute in relation to the first count is whether the victim gave her consent to the accused to have sexual intercourse with her. In respect of the second count, the main dispute is whether the accused inserted his penis into the vagina of the victim without her consent.

9. I first draw my attention to the evidence adduced by the victim. She said that she was sleeping and did not know how the accused entered into the house. However, during the cross examination, she changed her version and explained that the accused put his hand through the window and opened the door from inside. She did not give any reasonable explanation as to how she saw the accused entering through the door while she was sleeping. In re-examination, she reaffirmed that she was sleeping when the accused came into the room.
10. Furthermore, the victim in her evidence stated that the accused stood up and ejaculated. He then laid on her and inserted his penis into her vagina again. After a while he stood up and ejaculated again. She was questioned by the learned counsel for the defence, asking how did she see the accused ejaculated when the lights were off. The victim promptly answered that the lights were on at that time. She then changed her version of events and said the light were off until Eseta came and switched them on. The victim was asked the same question by the learned counsel for the prosecution during the re-examination. The victim was evasive and did not answer to it directly. She only said that she saw through the moonlights that the accused was taking off his clothes. The learned counsel for the prosecution once again asked the victim how did she see the accused ejaculated when the lights were off. After a long silence, the victim answered that she saw him moving. It appears that the victim was trying to evade in answering the said question.
11. The learned counsel of the Defence proposed to the victim during the cross examination the reasons that the accused did not engage in sexual intercourse for the second time, because Eseta came into the house while they were engaging with it for the first time. The victim affirmatively answered that is true.
12. I am mindful of the facts that the passage of time will affect the accuracy of memory. Specially, a rape victim may find it difficult to correctly recall every details of the incident. However, I find the above discuss inconsistencies and contradictions are fundamentally affecting the reliability of the witness and the credibility of her evidence.

13. The accused in his evidence stated that they had engaged in consensual sexual intercourse. He further stated that while they were having it, Eseta came into the house. They both felt ashamed. He denied having sexual intercourse for the second time. As discussed in paragraph eleven, the victim in her cross-examination confirmed that it is true that the accused did not engage in sexual intercourse for the second time as Eseta came into the house while they were having it for the first time.
14. In view of the above discussed reasons, I find the evidence given by the victim is contradictory and inconsistent. Therefore, it is my opinion that there is a reasonable doubt about the truthfulness, credibility and the probability of the evidence given by the victim. Accordingly, I find it is not safe to accept her evidence.
15. Accordingly, I find there are cogent reasons for me to disagree with the unanimous opinion of guilt given by the three assessors. Therefore, I disregard the opinion given by the three assessors.
16. In conclusion, I find the prosecution has failed to prove beyond reasonable doubt that the accused is guilty for these two counts of Rape as charged. Hence, I hold the accused is not guilty for these two counts of Rape and acquit him accordingly.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to be "R.D.R.T. Ragasinghe".

R.D.R.T. Ragasinghe
Judge

At Suva
16th February 2017

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