

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 081 OF 2012

STATE

VS

JOVESA SADRATA

Counsel : **Mr M. Vosawale and Ms U. Tamanikaiyaroi for the State**
: **Ms S. Ratu for the Accused**

Dates of Trial : **13th – 16th March 2017**

Summing Up : **17th March 2017**

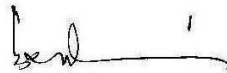
Judgment : **20th March 2017**

JUDGMENT

- [1] The accused, JOVESA SADRATA, is charged for committing Rape, contrary to Section 207 (1) and (2)(b) of the Crimes Decree No. 44 of 2009.
- [2] He pleaded not guilty to the count of Rape at the initial stage and then opted to abscond. This Court, after considering the material before it, Ruled that the trial of the accused to proceed in his absence. His trial commenced on 13th March 2017 and continued for 3 days. The complainant and a substitute medical officer gave evidence for the prosecution while the Counsel for the accused indicated that, in the present circumstances that her client exercises his right to remain silent.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the assessors found the accused guilty to the count of Rape by their majority opinion.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the complainant. According to her, on the night of 1st March 2012, she met the accused for the first time at Ritz club. They consumed alcohol and upon the invitation of the accused, the complainant went along with him to Valelevu. Then they had consensual vaginal intercourse in the missionary position, by the side of a creek, along a track. The accused then asked the complainant to turn over. He then inserted two fingers into her anus. She told him not to do it, as it was painful. Then he tried to insert his penis into her anus.
- [6] The complainant then got dressed, and took the track back to town. She called Crime Office and reported that "*it a case of rape*". Then they were picked up by a Police vehicle. Her statement was recorded and she was later examined by a Doctor.
- [7] The prosecution presented its case based on the theory that the accused acted without consent of the complainant or he acted recklessly on the consent of the complainant. The accused admitted having had consensual sexual intercourse with the complainant, and claims that she consented for both vaginal and anal intercourse, as they were parts of the same transaction.
- [8] The medical report of the complainant, in which the medical officer noted that she had a blood clot under her skin between her anus and vagina. She also had a 2 cm long laceration at the border of her anus and it could not be further examined as the complainant was in severe pain.
- [9] The majority of the assessors would have found the evidence of the prosecution was sufficient to prove that the accused had no consent of the complainant to penetrate her anus beyond a reasonable doubt. The complainant's claim is well supported by the medical finding and she was consistent with her allegation.
- [10] The majority of the assessors have also rejected the claim of consent by the accused.
- [11] In my view, the assessor's majority opinion was not perverse. It was open for them to reach such conclusion on the available evidence. The evidence of the prosecution does establish the fact that the accused penetrated the complainant's anus without her consent. When she was asked to turn over after consensual vaginal intercourse, she obliged as the accused wanted to have intercourse again. Then he inserted his fingers into her anus and the complainant told him not to.

- [12] It is clear that the complainant turned over obliging with the request of the accused with the belief that the accused wanted to have vaginal intercourse. Instead, he penetrated her anus. I accept her evidence. Therefore, the prosecution has proved beyond a reasonable doubt that the accused penetrated the complainant's anus with his fingers without her consent. I concur with the majority opinion of the assessors.
- [12] Therefore, it is my considered view that the evidence of the prosecution, presented through the complainant, is truthful and reliable to establish the elements of the offence of Rape as charged, beyond a reasonable doubt.
- [13] Accordingly, I convict the accused JOVESA SADRATA for the charge Rape and his bench warrant is extended.
- [14] This is the Judgment of the Court.



ACHALA WENGAPPULI
JUDGE



At Suva

This 20th Day of March 2017

Solicitor for the State : ***Office of the Director of Public Prosecution, Suva***
Solicitor for the Accused : ***Legal Aid Commission***

