

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 214 of 2013

STATE

vs.

VIJAY PRASAD

Counsel : Mr. J. Niudamu for the State
Mr. S. K. Koya with Mr. M. Raratabu for the
Accused

Dates of Trial : 24 & 25 January, 2017

Date of Summing Up : 26 January, 2017

Date of Judgment : 26 January, 2017

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

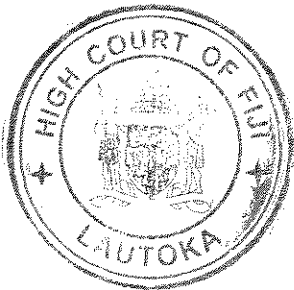
Particulars of Offence

VIJAY PRASAD between 1st May 2012 and 31st day of May 2012

at Wairuku, Rakiraki in the Western Division penetrated the vagina of **NAVNEETA PRASAD** with his penis, without her consent.

2. Three assessors returned unanimous opinions of not guilty to the offence.
3. The Court agreed with the assessors and also found the accused not guilty of the offence and acquitted the Accused.
4. That being the Judgment of the Court, it was entered for the following reasons:
 - a. The Prosecution called the alleged victim, a married woman, and an unsophisticated market vendor. She gave evidence that the accused came to her home one evening when she was alone and by way of threats to kill forced her to have sexual intercourse. Thereafter she made no complaint to her husband nor to anyone else until one month later she told her husband who immediately insisted on a report being made. The first statement made by the lady contained no reference to force or threat but merely recounted that there was a sexual act perpetrated by the accused in her home that evening. When the husband saw that innocuous statement, a further statement was made containing the threats and use of force that she referred to in her evidence.
 - b. The husband gave evidence of his hearing of the assault and of attending at the Police Station. It was revealed in the course of his evidence that he had himself made a statement to the Police in which he had stated that his wife only told him about the rape when he questioned her on hearing of a rumour that she was having an affair with the accused. He refused to admit that out of court statement in his evidence.
 - c. The accused, a bus driver, gave evidence in which he stated that he had only passing acquaintance with the lady from seeing her in the market and categorically denying that he had ever been to her home or ever having had sexual relations with her.

- d. He called one very unsatisfactory "alibi" witness who gave alibi for a completely different month from the month in which it is alleged the offence took place.
5. After hearing the evidence and directing myself on my own Summing Up, I cannot as a finder of fact find that the State had proved the case beyond reasonable doubt.
6. Most unfortunately, I could not believe the evidence either of the Prosecution witnesses nor of the Defence witnesses.
7. The complainant gave evidence which was contradictory, hesitant and unconvincing. Her husband was clearly not telling the truth.
8. Obviously if the Court has serious reservations about the Prosecution case then there is reasonable doubt and it matters not what the Accused has said in evidence.
9. The State has not proved the case to the requisite standard.



P. Madigan
JUDGE

At Lautoka
26th January 2017