

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 234 of 2016  
[CRIMINAL JURISDICTION]

STATE  
V  
JAI PRASAD

Counsel : Ms. J. Fatiaki with Ms. M. Konrote for State  
Mr. J. Reddy with Mr. J. Vulakauvaki for Accused

Hearing on : 12<sup>th</sup> - 15<sup>th</sup> June 2017

Summing up on : 16<sup>th</sup> June 2017

Judgment on : 19<sup>th</sup> June 2017

JUDGMENT

1. The accused is charged with the following offence;

*Statement of Offence*

**RAPE:** contrary to section 207(1) and (2)(a) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**JAI PRASAD** on the 31<sup>st</sup> day of July 2014 at Suva in the Central Division had carnal knowledge of Elizabeth Swamy without her consent.


2. The assessors have returned with the unanimous opinion that the accused is not guilty of the above offence.
3. I direct myself in accordance with the summing up delivered to the assessors on 16<sup>th</sup> June 2017 and the evidence adduced during the trial.
4. The prosecution led the evidence of four witnesses including the complainant. The accused gave evidence. At the time of the incident, the complainant was around 23 years old and the accused was around 32 years old.
5. It was noted that the complainant was evasive when she answered certain questions during cross-examination. She took time to answer certain questions. During the cross examination when the complainant was asked what her body position was when the accused was behind her penetrating her anus, her answer was that she does not remember. In my view, either the complainant did not want to divulge something relevant to this question or she was simply being uncooperative when she gave the said answer. I have also noted that the complainant said she does not remember when she was asked whether she had vaginal sex with the accused that night.
6. The following statements made by the complainant when she gave evidence indicated that the complainant herself is not sure about what took place between her and the accused that night;
  - a) *"I don't know what I was thinking, following him"* (she said this when she was questioned about following the accused to his bedroom);
  - b) *"I told her that I thought that I have been raped"* (according to the complainant, this is what she told her sister when she finally approached the sister after the incident);
  - c) *Immediately after that she said, ". . . , I knew that it was something I didn't want to happen, I didn't know what else to say to her".*

7. It is pertinent to note that the following evidence of the complainant *inter alia* suggests that the complainant chose to remain with the accused even after the accused's behavior became questionable and after the complainant had clear indications from the accused that the accused had an intention other than to finish the drinks with her;
  - a) the accused asked her when she and the accused were alone and drinking alcohol late in the night, whether she wants to go to the seawall;
  - b) then the accused asked her whether she wants to watch a rated movie and played a movie with naked women despite her saying 'no';
  - c) thereafter the accused asked her to come closer and she went and sat closer to him;
  - d) then the accused started kissing her or tried to kiss her (the complainant changed her earlier position during cross examination) but she did not take steps to leave the place;
  - e) thereafter she stood up when the accused asked her to stand up; and
  - f) then the accused told her to go to the room.
  
8. It should be made clear that this court does not find fault with the complainant's decision not to leave that place given the aforementioned behavior of the accused according to her evidence. There was no legal requirement for the complainant to leave that place in such circumstances. However, I cannot accept the complainant's evidence that she thought the accused was joking when he told her to go to his bedroom even after the aforementioned events, as probable and reliable.
  
9. According to the complainant the accused had started penetrating her anus when she was unconscious and the accused continued to penetrate her anus after she regained consciousness. She said it was the first time for her anus to be penetrated by a penis. When she was asked whether there were any injuries in her anus as a result of the penetration, she said there was bleeding.



10. However during the medical examination that was conducted within 48 hours, no injury had been noted in the complainant's anus. The anus had been intact. An injury had been noted in the complainant's pelvic area which is consistent with vaginal penetration according to the fourth prosecution witness. Though the fourth prosecution witness said in his evidence that the fact that there were no injuries in the anus does not rule out anal penetration, he said twice in his evidence that the aforementioned injury in the pelvic area is consistent with vaginal penetration.
11. Considering all the evidence led in this case, I find that the complainant's evidence is more consistent with someone who regrets and feels guilty of what took place in the night in question inside the accused's house.
12. In my view, the complainant's evidence that the accused penetrated her anus while she was unconscious and continued to penetrate her anus without her consent after she regained consciousness is not credible and reliable. On the other hand, the medical evidence is consistent with the accused's version that there was vaginal penetration that night and not anal penetration.
13. All in all, I find that the prosecution has failed to prove the offence the accused is charged with beyond reasonable doubt. Therefore, I agree with the unanimous opinion of the assessors and find the accused not guilty of rape.
14. The accused is acquitted accordingly.



  
Vinsent S. Perera  
JUDGE

Solicitors for the State  
Solicitor for the Accused

: Office of the Director of Public Prosecutions, Suva.  
: Jiten Reddy Lawyers, Suva.