

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 258 of 2016

STATE

v.

“AB”

Counsel: Ms. K. Semisi for State
Ms. C. Choy for Accused

Hearing: 19th to 20th July 2017

Summing Up: 21st July 2017

Judgment: 24th July 2017

JUDGMENT

Introduction

1. The names of the accused and the victim are suppressed. The accused is hereafter referred to as **AB** and the victim as **CD**.
2. The accused is charged with two counts of Rape, contrary to Section 207(1) and (2) (a) of the Crimes Act. The particulars of the offences are that:

First Count,

“AB on the 2nd day of July 2016 at Dere Bay, Koro Island in the Central Division had carnal knowledge of CD without her consent”

Second Count

AB on the 2nd day of July 2016 at Dere Bay, Koro Island in the Central Division had carnal knowledge of CD without her consent.

3. The accused pleaded not guilty for these two counts. Hence, the matter proceeded to the hearing. The hearing commenced on the 19th of July 2017 and concluded on the 20th of July 2017. The prosecution presented the evidence of the victim. The accused then gave evidence on oath for the defence. The learned counsel for the prosecution and the defence made their respective closing addresses on the 19th of July 2017. I then delivered my summing up on the 21st of July 2017.
4. The three assessors returned with the unanimous opinion of not guilty.
5. Having considered the evidence adduced by the parties during the hearing, the respective closing addresses of the counsel, the opinion of the assessors and the summing up, I now proceed to pronounce my judgment as follows.

Background

6. The prosecution alleges that the accused forcefully had sexual intercourse with the victim on two occasions on the 2nd and 3rd of July 2016 respectively. The accused and the victim have been married for fourteen years. The victim in her evidence said that the accused got mad at her when she came home after her work in the night of 2nd of July 2016. He threatened her and demanded her to have sex with him. He was looking at the two knives that were placed under the kitchen table. She was scared and felt that her life was in danger. She then submitted herself to him to have sex. The same thing happened again on the 3rd of July 2016.
7. The accused denied the allegation and said that he had consensual sexual intercourse with the victim on the 2nd and 3rd of July 2016 respectively. According to the accused, they had been in a very loving and understanding relationship. He sacrificed his job and came to Koro Island with the victim as she got an offer to work as a Manager in a Resort.


Analysis

8. In view of the evidence adduced by the parties and the agreed fact, the main dispute in this matter is whether the victim gave her consent to have sexual intercourse with the accused on the 2nd and 3rd of July 2016 respectively.
9. The learned counsel for the defence questioned the victim about the inconsistent nature of her evidence given in the court with the statement she made to the police on the 4th of July 2016. The victim in her evidence said that the accused threatened her, saying that he will carry her head and intestine and cut her breast. The victim admitted in her evidence that she did not state about these alleged threatening and the words used by the accused in the statement made to the police.
10. According to the evidence given by the victim, the defining moment of these alleged incidents is the threats made by the accused, saying that he will carry her head and intestine and cut her breast. These threats led her to feel that her life was in danger as the accused was looking at the two knives and approach towards her. It was the main reason for her to submit herself to the accused to have sexual intercourse as she feared and scared about her life.
11. The victim said that she did not go to the police and sought assistance in the night of 3rd of July as the Police Station is located at the other side of the island. However, the following morning she went to work and then only she went to the Police Station to report this matter.
12. The victim in her evidence explained the reason why she failed to mention about the threats made by the accused in her statement made to the Police. She said that she was still frightened and scared, that was the reason she forgot to state about the threats made by the accused.
13. I am mindful of the fact that sometimes the victims of rape matters are unable to recall every minute detail soon after the incident due to the traumatic impact or the experience

they undergo *et cetera*. Sometimes, with the passage of time they would be able to resurrect their memory and recall some details of those traumatic experiences. However, in this matter, the victim forgot to state the most defining incident that led her to submit herself to the perpetrator on two consecutive occasions on the 2nd and 3rd of July 2016 respectively in the statement made to the police. According to the evidence given by the victim, it appears that she was not in a traumatic state of mind on the 4th of July 2016.

14. I accordingly find that the omission of stating the threats and the words used by the accused that led the victim to submit herself to the accused to have sexual intercourse on two consecutive occasions has created a reasonable doubt about the credibility and reliability of the evidence given by the victim.
15. Accordingly, it is my opinion that the prosecution has failed to prove beyond reasonable doubt that the victim did not give her consent to have sexual intercourse with the accused on two consecutive occasions on the 2nd and 3rd of July 2016. Therefore, I do not find any cogent reasons to disregard the unanimous opinion of not guilty given by the three assessors.
16. I accordingly hold that the accused is not guilty for the two counts of rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and acquit him from the same.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
24th July 2017

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