

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 009 OF 2016 LAB

STATE

V

SADDAM FIDA HUSSAIN

Counsels : Mr. R. Kumar for State
Mr. A. Sen for Accused

Hearings : 24 and 25 July, 2017

Summing Up : 26 July, 2017

Judgment : 27 July, 2017

JUDGMENT

1. On 24 July 2017, in the presence of his counsel, the accused pleaded not guilty to the counts in the following information:

COUNT 1

STATEMENT OF OFFENCE

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

PARTICULARS OF OFFENCE

SADDAM FIDA HUSSAIN, on the 26th day of February 2016, at Tabia in the Northern Division, unlawfully and indecently assaulted **SHAGUFTA SHAZNA BANO**, by touching her breast.

COUNT 2

STATEMENT OF OFFENCE

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Act 2009.

PARTICULARS OF OFFENCE

SADDAM FIDA HUSSAIN, on the 26th day of February 2016, at Tabia in the Northern Division, penetrated the vagina of **SHAGUFTA SHAZNA BANO**, without her consent.

2. The trial then went on before myself and three assessors for three days. The three assessors returned with their opinions on 26 July 2017. They were unanimously of the opinion that the accused was not guilty as charged on both counts.
3. The law at this stage of the trial is section 237 (1), (2), (4) and (5) of the Criminal Procedure Act 2009, which reads as follows:

"...237 (1) When the case for the prosecution and the defence is closed, the judge shall sum up and shall then require each of the assessors to state their opinion orally, and shall record each opinion.

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors...

When the judge does not agree with the majority opinion of the assessors, the judge shall give reasons for differing with the majority opinion, which shall be –

(a) written down; and

(b) pronounced in open court.

5) In every such case the judge's summing up and the decision of the court together with (where appropriate) the judge's reasons for differing with the majority opinion of the assessors, shall collectively be deemed to be the judgment of the court for... all purposes..."

4. In Ram Dulare, Chandar Bhan and Permal Naidu vs Reginam [1956 – 57]. Fiji Law Report, Volume 5, pages 1 to 6, page 3, the Fiji Court of Appeal, said the following, on an equivalent section of the then Criminal Procedure Code:

"...In our opinion learned counsel for the appellants is confusing the functions of the assessors with those of a Jury in a trial. In the case of the King v. Joseph 1948, Appeal Case 215 the Privy Council pointed out that the assessors have no power to try or to convict and their duty is to offer opinions which might help the trial Judge. The responsibility for arriving at a decision and of giving judgment in a trial by the High Court sitting with the assessors is that of the trial Judge and the trial judge alone and in the terms of the Criminal Procedure Code, section 308, he is not bound to follow the opinion of the assessors..."

5. In Sakiusa Rokonabete v The State, Criminal Appeal No AAU 0048 of 2005, the Fiji Court of Appeal said as follows:

"...In Fiji, the assessors are not the sole judge of facts. The judge is the sole judge of fact in respect of guilt, and the assessors are there only, to offer their opinions, based on their views of the facts..."

6. I have reviewed the evidence called in the trial, and I have directed myself in accordance with the Summing Up I gave the assessors yesterday. The assessors' verdict was not perverse. It was open to them to reach such conclusion on the evidence. However, I am not bound by their opinion. On my analysis of the case based on the evidence, and on my assessment of the credibility of the witnesses, I am bound to disagree with unanimous guilty opinions of the three assessors.

7. My reasons are as follows:

8. I accept the female complainant's (PW1) evidence and her version of events. Although Mr. A. Sen, on behalf of the defence, managed to rattle her during cross-examination, her evidence as a whole was credible, despite her inability to fully name her "private part" and being mixed up on the dates. I accept it was often not easy for young female complainants to expose what allegedly happened to them during rape trials, and PW1 was no different. On the whole she was a credible witness to me.
9. I accept what she said that the accused came into the bathroom when she was bathing on 26 February 2016. I accept that the accused stood behind her, gagged her with one hand and used the other hand to touch her right breast. I accept that the accused then touched and poked her vagina with his finger.
10. I accept Doctor Inosi Vatucicila Voce's (PW3) evidence and PW1's medical report, he tendered as Prosecution Exhibit No. 1. PW3 confirmed in D(12) of the report that PW1's hymen was absent 11 days after the alleged finger rape. PW3 said in D(10) of the report PW1 told him, the accused entered her bathroom and touched her breast and inside her panty. As you can see in the courtroom, PW1 was very shy in describing the details of her private part. That is not unusual with young female complainants in most rape cases.
11. Furthermore, in his evidence, the accused said that on 26 February 2016, he was tying goats and cows next to PW1's house. So, he was near the crime scene at the material time. I reject his denials, as I find them not credible.
12. On the whole, I accept the complainant (PW1) and the doctor's evidence (PW3), and I find the accused guilty as charged on both counts. I convict him accordingly on those counts.


Salesi Temo

JUDGE



Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Maqbool & Company, Labasa