

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 113 OF 2016

STATE

V

JONE TUAGONE

Counsel: Mr A. Datt for State  
Ms. J. Singh for Accused

Date of Summing Up: 11<sup>th</sup> June, 2018  
Date of Judgment : 12<sup>th</sup> June, 2018

JUDGMENT

1. The Accused is charged with one count of Rape and was tried before three Assessors. The Information reads as follows:

*Statement of Offence*

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

*Particulars of Offence*

JONE TUAGONE on the 08<sup>th</sup> day of November 2015, at Tagitagi, Tavua, in the Western Division, had carnal knowledge (penile sex) of **AKENETA NAILEVU** without the said **AKENETA NAILEVU**'s consent.

2. After a deliberation of 30 minutes, Assessors returned with a unanimous opinion that the Accused is guilty of Rape as charged.
3. I adjourned overnight to deliberate on my Judgment. Having reviewed my own summing up and evidence led in trial I have decided to accept the unanimous opinion of Assessors. I proceed to give my reasons as follows.
4. To find the Accused guilty of Rape in this case, Prosecution must prove beyond a reasonable doubt that the Accused penetrated Complainant's vagina with his penis without her consent.
5. Prosecution called five witnesses and based their case substantially on the evidence of the Complainant. Prosecution relies on evidence of recent complaint, distress and medical evidence to prove consistency of the Complainant's evidence.
6. Defence case is one of denial. They say that the Accused did not commit the alleged Rape. Defence disputes the identity of the Accused and says that the Accused was elsewhere when the alleged rape occurred.
7. Having reviewed all the evidence led in the trial, I am satisfied that the evidence Complainant gave in Court is truthful and believable.
8. I am satisfied beyond reasonable doubt that it is the Accused and nobody else that had committed the alleged rape.
9. This is not a 'fleeting glance case'. Accused is the brother-in-law of the Complainant. Complainant had known and spoken to the Accused since the marriage of her brother. She recognized the Accused at a close distance when she was being chased outside the house and being tied up with a *sulu*. By this time, the Accused had removed the t-shirt that was covering his face and there was no obstruction to the full view of his face. The incident had happened around 6 o'clock in a November morning when the sun was shining. Complainant also recognized the Accused in good lighting condition when she was being raped inside the house for nearly ten minutes. The window in the bedroom through which sunlight came in was open and the curtain was not down. The kerosene lamp was also lighting the room. In the process of identification in this case, 'Turnbull Guidelines' are satisfied.
10. The evidence of the Complainant is consistent and reliable. Prosecution adduced recent complaint evidence to prove Complainant's consistency in her conduct.

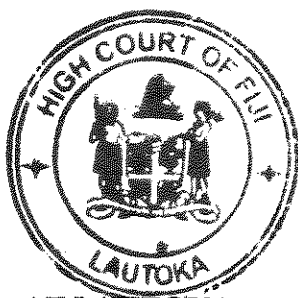
Soon after the incident, Complainant went to uncle Ilisoni, the only person she knew in the village. Ilisoni was not home at that time. (Ilisoni in his evidence confirmed that he had gone to church on Sunday the 8<sup>th</sup> November, 2015). She came back home and, in the afternoon, she walked down for nearly an hour to see Rupeni, her boyfriend in Qalela, and relayed the whole incident. She also made a complaint to police on the following day. Rupeni and WC Alanieta confirmed that they received the complaint of rape from the Complainant. The recent complaint evidence supported the evidence of the Complainant.

11. Prosecution relies on distress evidence to prove Complainant's consistency in her conduct. PW 5 -Dr. Lanieta said that the patient looked a bit scared. The way Complainant was talking, doctor found her to be a bit slow; had to think of what to say and then talked and she was also in pain. PW 4- WC Alanieta said that when the statement of the Complainant was being recorded, Complainant looked scared; talked to herself and most of the time she mumbled and sometimes she did not hear what Complainant talked. Ilisoni also confirmed that after the rape incident, Complainant deserted her house and came to live in his house.
12. I am satisfied that the Complainant was in a distressed condition after the alleged incident and that distressed condition was not artificial and was only referable to the alleged rape and not any other cause.
13. Prosecution also relies on doctor's medical evidence and evidence of Rupeni to prove consistency of the Complainant's version. Doctor said that the patient had a lot of bruises on her back and also scratches on her joints especially on her elbows and her knees. The bruises were more on the back of the patient. Near the collar bone, doctor noticed a bruise, right underneath the chin. Rupeni also said that fresh bruises with blood were seen on both of her elbows and both shoulders.
14. Doctor's professional opinion is that the bruises and the scratch marks on the patient most probably could have been caused when being dragged on a hard bumpy surface. She agreed that the bruise near the collar born region could have been caused when resisting the pressure if somebody wrapped a piece of cloth around her neck and pulled. Doctor's evidence is consistent with that of the Complainant that she was tied in her neck with a *sulu* and was being dragged inside the house.
15. Defence argues that those injuries would have been received while working in cane fields. Doctor did not agree that the scratches could have been caused while going through cut cane fields because the marks she noted were of irregular shape

and not linear. The fact that bruises were more on the back of the patient dismisses the possibility of them being caused while going through cut cane fields.

16. It was argued that the doctor had observed no injuries on genitalia of the Complainant because she was never raped.
17. Doctor found no bruising, scratches or bleeding in Complainant's vaginal examination. She explained instances where a forced or non-consensual sexual intercourse could take place without causing any injury to vagina. Those instances do match ideally with the Complainant's scenario. She had given birth to three children. She had surrendered herself to the Accused without much resistance. In my opinion, doctor's finding is not inconsistent with the evidence of the Complainant.
18. I find that scratches and bruises found on Complainant's body are consistent with Complainant's evidence that she was raped.
19. Defence says that Complainant's evidence is not consistent with her previous statement to police and what she had told the doctor soon after the alleged incident.
20. Prosecution, through the evidence of the doctor and the police constable, proved that the Complainant was in a distressed condition after the alleged incident. It is possible in such a situation, after a traumatic incident of rape, that she was not in a sound mental condition to describe everything in detail to a police officer. In Court however, the Complainant described in detail what happened to her. She is consistent right throughout in her evidence that she was raped in that morning. Having observed the demeanour and intellectual capacity of the Complainant, I find the so called inconsistencies to be not material enough to discredit the version of the Prosecution.
21. The version of the Defence is that Accused was in Vatulaulau and the Complainant had mistakenly identified the Accused. Defence called Ropate to show that the Accused was with him at Vatulaulau at the material time and also the day prior to the alleged rape incident.
22. The Complainant on the other hand said that she is sure that it was the Accused and she clearly recognized her brother-in-law, Jone. Ilisoni confirmed that the Accused was seen in the village where the rape took place on the day prior to the

23. The *alibi* witness Ropate is a close relative of the Accused and no doubt an interested witness as far as the Defence case is concerned. Ropate is not consistent in his evidence and therefore, not reliable. He proved himself to be incapable of recalling the specific dates that the Accused had visited him. He contradicted his own statement to police in material particular as to the dates in *alibi* notice which is crucial to the Defence case. In quite contrast to his evidence in Court, Ropate had never told police when he gave his statement on the 1<sup>st</sup> of August, 2016, nine months later, that the Accused was with him at his house on the 7<sup>th</sup> and 8<sup>th</sup> of November, 2015. He had merely stated that it was sometime when the cane crushing season ended in 2015, his wife's uncle namely Jone Tuagone came to stay with him.
24. I watched Ropate giving evidence in Court. He was evasive not credible in his testimony.
25. I observed Complainant's demeanor in Court. She is an honest and credible witness.
26. I accept the version of the Prosecution and reject that of the Defence. Prosecution proved the charge beyond reasonable doubt. I adopt the the unanimous opinion of Assessors.
27. I find the Accused guilty of Rape as charged. Accused is convicted accordingly.
28. That is the judgment of this Court.



AT LAUTOKA  
12<sup>th</sup> June, 2018

Aruna Aluthge  
Judge

Solicitors: Office of the Director of Public Prosecution for State  
Legal Aid Commission for Defence