

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 107 of 2014

STATE

-v-

ATISH NATH SHARMA

Counsel : Ms. S. Seruvatu for the State

Mr. A.R. Singh for Accused

Date of Summing Up : 19th July, 2018

Date of Judgment : 24th July, 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 [2] [a] of the Crimes Decree 44 of 2009.

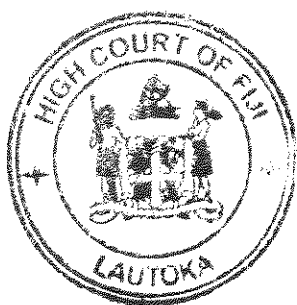
Particulars of Offence

ATISH NATH SHARMA between the 9th day of August, 2014 to 10th day of August, 2014 at Nadi in the Western Division, penetrated the vagina of **PREETI POOJA SHARMA**, with his penis without the consent of the said **PREETI POOJA SHARMA**.

2. After a short deliberation, Assessors returned a unanimous opinion that the Accused is guilty of Rape as charged.
3. I adjourned to deliberate on my judgment. Having reviewed my own summing up and evidence led in trial, I have decided to adopt the unanimous opinion of Assessors. I proceed to give my reasons as follows.
4. Prosecution called only the Complainant. Prosecution relies on evidence of the complaint she promptly made to police to prove the consistency of the Complainant's conduct.
5. Defence case is one of denial. Accused completely denies that he was ever engaged in a sexual intercourse with the Complainant.
6. Having considered all evidence led in the trial, I am satisfied that the evidence the Complainant gave in Court is truthful and believable.
7. Defence argues that it would not have been possible for the Accused to rape the Complainant the way she described in court that it happened. However, the Assessors were convinced that Complainant was raped the way she described.

8. The Accused had consumed beer but not more than 6 small bottles. There is no evidence that he was badly drunk so that he was physically weak and incapable of overpower the Complainant.
9. Complainant is Accused's cousin. According to her evidence it was not the first time she had gone out with the Accused. She had visited him in that crucial evening to tie a knot on the Accused at *Rakshabhandan* celebration. She had trusted her cousin when he invited her to accompany him to the Bula festival. The Accused had suddenly decided to drink alcohol with her and had insisted her to drink. She frankly admitted that she had no option but to consume two glasses of beer at the Farmers Club. However she vehemently denied that she drank alcohol when she was taken to the beach.
10. Complainant's conduct in going out and having drinks with the Accused who is her cousin is quite natural and believable. Her words speak for the trust she placed on the Accused. She told, *'I didn't think for a second that he would do something like that to me, if anything, I thought if something like that would happen, he would be there to stop it'*.
11. She said that she had protested and screamed during the incident. She had told police that she screamed and maintained her position in her evidence. The incident had happened during midnight. It is possible that no one could see or hear what was being done to her that night.
12. After the alleged rape incident, she had listened to the Accused and had calmed herself down because she had no other option but to go home with the Accused that night. As soon as she arrived home, she went to the room, locked the door and rang up the police. She did not come out until the police officers had arrived. She made a prompt complaint to police. Complainant's conduct is quite consistent with the allegation of rape.

13. Complainant was medically examined. She said that she got three stiches in her vagina because it was torn. The fact that the medical report was not tendered in evidence is not a good reason for the court to disbelieve her version.
14. I carefully observed Complainant's demeanour in court. She was confident and straightforward in giving her answers. She had no reason or motive to fabricate a serious allegation of this nature against her cousin whom she had visited to tie a knot at *Rakshabhandan*. I am satisfied that the Complainant is an honest and trustworthy witness.
15. I accept the version of the Complainant and reject the version of the Defence. Prosecution proved beyond a reasonable doubt that the Accused penetrated the vagina of the Complainant with his penis without her consent. I accept the unanimous opinion of Assessors which is available on evidence led in trial.
16. I find the Accused guilty of Rape.
17. The Accused is convicted accordingly.
18. That is the Judgment of this Court.



Aruna Aluthge

Judge

AT LAUTOKA

24th July, 2018

Solicitors: Office of the Director of Public Prosecution for State
Aman Ravindra Singh Lawyers for Defence