

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 284 of 2016

STATE

v.

AD

Counsel: Ms. K. Semisi for State
Mr. A. Chand, Ms R. Boseiwaqa for Accused

Date of Hearing: 20th February 2018

Date of Summing Up: 21st February 2018

Date of Judgment: 21st February 2018

JUDGMENT

1. The names of the Accused and the Complainant are suppressed.
2. The Accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are that:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

AD on the 24th day of July 2016 at Nasinu in the Central Division penetrated the vagina of **AC** with his tongue, without her consent.

SECOND COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

AD on the 24th day of July 2016 at Nasinu in the Central Division unlawfully and indecently assaulted **AC** by sucking her breast.

3. The hearing commenced on the 20th of February 2018 and concluded on the same day. The Prosecution adduced the evidence of three witnesses, including the Complainant. The Accused was present in the court at the commencement of the hearing. However, he chose not to attend to the hearing after the morning tea break of the 20th of February 2018. Having satisfied that the Accused was sufficiently given notice about the hearing, the court decided to proceed with the hearing in his absence. Subsequent to the Prosecution case, the learned counsel for the prosecution and the defence made their respective closing submissions, which was followed up by the Summing Up.
4. The three assessors in their unanimous opinion found the accused guilty for both counts.
5. Having carefully considered the evidence adduced during the hearing, the respective closing submissions of the counsel, the summing up and the unanimous opinion of the assessors, I now proceed to pronounce my judgment as follows.
6. Upon careful perusal of the evidence presented during the hearing and the agreed facts tendered by the parties, I find that the two main disputed issues in respect of the offence of rape are whether the Accused has penetrated into the vagina of the Complainant with

his tongue, and whether the Complainant consented the accused to penetrate into her vagina in that manner.

7. In respect of the offence of Sexual Assault, the main issue is whether the Accused had a lawful authority or excuse, in this case the consent of the Complainant, to suck her breast in that manner.
8. The learned counsel for the defence urges that the inconsistency nature of the evidence given by the Complainant in court with the statement made to the Police, renders the evidence of the Complainant unreliable. It is true that the Complainant in her evidence admitted that certain incidents, which she testified in evidence, have not been recorded in the statement that she made to the police. However, I find those incidents are peripheral issues and have not affected the root of the main dispute. Therefore, I do not find the alleged inconsistencies or the omissions have affected the credibility or the reliability of the evidence given by the Complainant.
9. The Complainant in her evidence explained that she was new to the area and had no place or no person to go, when the Accused unleashed his sexual exploitation towards her. She had to remain inside the house. The Complainant wanted to tell her father about this incident when she went to give him the bottle of honey. But, she was afraid whether her father would believe her or would shout at her. She came to live with her father recently. Until then, she had been living with her mother. The Complainant said that she felt happy when she heard the voice of Uncle Filimoni, as she felt that there is someone who can help her. I accept her explanation for not running out of the house and seek help from the neighbours.
10. In view of the reasons discussed above, I accept the evidence given by the Complainant as reliable, credible and truth.
11. Therefore, I do not find any cogent reasons to disregard the unanimous opinion of guilt given by the assessors.

12. In conclusion, I hold that the Prosecution has proven beyond reasonable doubt that the accused guilty for these two counts as charged. Therefore, I find the accused guilty for the offence of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act and for the offence of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
21st February 2018

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