

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 168 of 2018

STATE

vs.

VIJAY RAM

Counsel: Ms. S. Tivao for the State
Mr. J. Reddy for Accused

Date of Hearing: 01st and 2nd October 2019

Date of Closing Submission: 03rd October 2019

Date of Summing Up: 04th October 2019

Date of Judgment: 25th October 2019

JUDGMENT

1. The accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offence are that:

FIRST COUNT

Statement of Offence

RAPE: *Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.*

Particulars of Offence

***VIJAY RAM** on the 5th January 2018, at Nakasi in the Central Division, had carnal knowledge of **VANI KOROI**, without her consent.*

2. The hearing commenced on the 01st of October 2019 and concluded on the 2nd of October 2019. The prosecution presented the evidence of three witnesses including the complainant. The accused gave evidence for the defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up.
3. The three assessors in their opinion unanimously found the accused guilty of this offence of rape.
4. Having taken into consideration the evidence presented during the hearing, the closing addresses of the parties, the summing up and the opinion of the three assessors, I now proceed to pronounce the judgment as follows.
5. The prosecution alleges that the accused had taken the complainant to a secluded location near Nakasi High School and then penetrated into her vagina with his penis without her consent. The defence denies the allegation, stating such an incident never happened.
6. The complainant in her evidence said the accused asked her to come to the back gate of the St. Christopher's Home in the evening of the 5th of January 2018. The complainant had gone to the back gate and then boarded into the van driven by the accused. She knew that the accused wanted to have sexual intercourse with her, however, she still boarded into the van of the accused. The accused then took her to a secluded location near Nakasi High School. At that particular location, the accused got off from the van and then pulled her over to the driver's seat. When she tried to get off from the van through the door of the driver's side, the accused had closed the door, injuring the arm of the complainant. He then got on to the van and pulled her skirt, tights and the underwear down and inserted his penis into her vagina.

7. The complainant said that her arm got injured during the course of this alleged incident. However, Sister Tuinea in her evidence said that she did not notice any injuries on the arm of the complainant when she returned to the St. Christopher's Home in the evening of the 5th of January 2018. Moreover, Doctor Natuva said that she did not find any injuries on the arms of the complainant during the medical examination which she conducted on the complainant on the 6th of January 2018.

8. I now take my attention to the cross examination of the complainant. While concluding the cross examination of the complainant, the learned counsel for the accused asked the complainant that the accused did not place his "*polo*" on her vagina on that day at all. The complainant answered affirmatively, saying "yes". I am mindful of the fact that the complainant said during the evidence in chief that she told the accused not to penetrate into her vagina with his penis, but he proceeded to penetrate into her vagina with his penis. Accordingly, it appears that the complainant has given two contrasting versions in respect of the penetration of the penis of the accused into her vagina. The learned counsel for the prosecution did not ask any question from the complainant during the re-examination to clarify these inconsistent versions of the events pertaining to the element of penetration. This inconsistency goes to the root of the allegation, thus creating a reasonable doubt whether the accused actually penetrated into the vagina of the complainant as alleged.

9. Sister Tuinea had asked the complainant where was she when the complainant returned to the St. Christopher's Home in the evening of the 5th of January 2018. The complainant had told Sister Tuinea that she went to the shop. The complainant had not told Sister Tuinea about this alleged incident. Sister Tuinea had then told the complainant that she was lying and go back to her room and pray for her lies. Sister Tuinea had further told that the complainant can tell her the truth on the next morning. On the following morning, at around 6.30 a.m., the complainant had told Sister Tuinea that she went out with the accused. Sister Tuinea then asked the complainant whether the complainant and the accused had sexual intercourse, for which the complainant answered affirmatively.

10. Accordingly, it appears that the complainant had not related this alleged incident to Sister Tuinea in the evening of the 5th of January 2018. Instead of that, she had lied to Sister Tuinea, saying that she had gone to the shop. Neither the complainant nor other witnesses of the prosecution provided any reasons, explaining why did the complainant lie to Sister Tuinea? Sister Tuinea had then told the complainant to go and pray for her lies. Sister Tuinea did not explain why she came to a conclusion that the complainant was lying. On the following morning, the complainant had told Sister Tuinea, that she went out with the accused. It was Sister Tuinea who then asked the complainant whether she had sexual intercourse with the accused. For which the complainant answered affirmatively.
11. Sister Tuinea in her evidence said the complainant is a slow learner. However, the prosecution did not provide any sufficient evidence in order to establish the complainant was not in a position to comprehend what the accused had allegedly done to her. No scientific or expert evidence provided in the court to conclude that the complainant is a slow learner.
12. The above discussed reasons create a reasonable doubt about the reliability and the credibility of the evidence given by the complainant. Accordingly, I find the evidence of the complainant is not reliable and credible, thus refuse to accept them as truthful evidence.
13. In view of the above reasons, I hold that the prosecution has failed to prove beyond reasonable doubt that the accused had committed this alleged crime to the complainant. Accordingly, I have cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
14. In conclusion, I find that the accused not guilty of the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and acquit him from the same accordingly.

15. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
25th October 2019

Solicitors
Office of the Director of Public Prosecutions for the State.
Jiten Reddy Lawyers for the Accused.