

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 94 of 2017

STATE

V

MIKAELE RADRODRO

Counsel : Ms. Sadaf Shameem for the State
Accused appears in person

Dates of Trial : 5-6 December 2019

Summing Up : 12 December 2019

Judgment : 16 December 2019

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "TV".

JUDGMENT

[1] According to the Information filed by the Director of Public Prosecutions (DPP), the accused Mikaele Radrodro was charged with the following offences:

COUNT ONE

Statement of Offence

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

Particulars of Offence

MIKAELE RADRODRO, on the 6th day of March 2017, at Raiwai, Suva, in the Central Division, unlawfully and indecently assaulted **TV** by fondling her breasts.

COUNT TWO

Statement of Offence

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

Particulars of Offence

MIKAELE RADRODRO, on the 6th day of March 2017, at Raiwai, Suva, in the Central Division, unlawfully and indecently assaulted **TV** by sucking the nipples of her breasts.

COUNT THREE

Statement of Offence

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

Particulars of Offence

MIKAELE RADRODRO, on the 6th day of March 2017, at Raiwai, Suva, in the Central Division, penetrated the vagina of **TV** with his finger, without her consent.

- [2] The accused pleaded not guilty to the three charges and the ensuing trial was held over 2 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of the said three charges.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 210 (1) (a) of the Crimes Act No. 44 of 2009 (Crimes Act), which deals with the offence of

Sexual Assault. I also explained to the Assessors the salient provisions of Section 207 (1) and (2) (b) of the Crimes Act, which deals with the offence of Rape.

[6] I directed the Assessors that in order for the prosecution to prove the first count of Sexual Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this instance the 6 March 2017);
- (iii) At Raiwai, Suva, in the Central Division;
- (iv) Unlawfully and indecently assaulted the complainant TV, by fondling her breasts.

[7] Similarly, in order for the prosecution to prove the second count of Sexual Assault, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this instance the 6 March 2017);
- (iii) At Raiwai, Suva, in the Central Division;
- (iv) Unlawfully and indecently assaulted the complainant TV, by sucking the nipples of her breasts.

[8] I directed the Assessors that in order for the prosecution to prove the third count of Rape, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this instance the 6 March 2017);
- (iii) At Raiwai, Suva, in the Central Division;
- (iv) Penetrated the vagina of the complainant TV with his finger;
- (v) Without the consent of the complainant; and
- (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.

[9] All the above individual elements were further elaborated upon in my summing up.

[10] The prosecution, in support of their case, called the complainant TV, and her aunt, Marica Bogiva.

[11] The accused exercised his right to remain silent.

[12] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), the prosecution and the defence have consented to treat the following facts as “*Agreed Facts*” without placing necessary evidence to prove them:

1. The complainant is TV, 19 years old at the material time.
2. The accused is Mikaele Joji Radrodro, 58 years old at the material time.
3. The accused is the uncle of the complainant as he is married to the complainant’s father’s sister namely Sera Waqa.
4. At the material time the complainant was residing with the accused and her aunt Sera Waqa at Lot 17 McFarlane Road, Raiwai.
5. At the material time the complainant was a student at Nabua Secondary School, Matua program.
6. On 6th March 2017, the accused had left for work in the morning but returned home to watch a rugby match on the television.
7. On 6th March 2017, the complainant was at home when the accused returned home after leaving for work in the morning.
8. The complainant was medically examined on 8th March 2017 at MSP Clinic by Dr. Shelvin Kapur.

[13] Since the prosecution and the defence have consented to treat the above facts as “*Agreed Facts*”, without placing necessary evidence to prove them, these facts are considered as proved beyond reasonable doubt.

[14] The complainant is now 22 years of age. Her date of birth is 24 May 1997. Therefore, during the time of the alleged offences, she would have been 19 years old (That is an agreed fact as well).

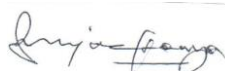
[15] The complainant clearly testified to all the acts that the accused had perpetrated on her, on that fateful day, the 6 March 2017. I have summarized the complainant’s evidence at length in my summing up. I accept the evidence of the complainant as truthful and credible.

[16] The complainant testified as to how the accused had unlawfully and indecently fondled her breasts. She also testified as to how the accused had unlawfully and indecently sucked the nipples of her breasts. Further the complainant clearly testified as to how the accused had forcibly penetrated her vagina with his finger.

[17] Prosecution witness Marica Bogiva, a paternal aunt of the complainant, testified as to how the complainant had come to her house around 10.00 in the night on 6 March 2017.

The witness said that the complainant had then told her that she was in one of the rooms (in the accused's and her aunt Sera's house) lying down there when Mika (the accused) had entered the room. When Mika entered the room he had closed the room door and he went straight to her and lay on her. She said when he lay on her he started to kiss her and started touching her breasts. Then he had tried to remove her trousers. The witness said that the complainant kept on crying while relating this story to her.

- [18] I am satisfied that the complainant made a prompt and a proper complaint of the incidents to her aunt, which was on the very same day the incidents occurred. It is my opinion that the complainant's credibility is enhanced and strengthened in view of this recent complaint.
- [19] The accused's position is that the complainant is not a credible witness and cannot be believed. His position is that although the complainant alleges that he had forced himself on her, there is no evidence to establish this fact. There were no torn clothes, no scratch marks or bruises on the complainant, or no bleeding so as to prove or establish the complainant's story.
- [20] The Assessors have found the evidence of the prosecution as truthful and reliable as they have by a unanimous decision found the accused guilty of all the charges. Therefore, it is clear that they have rejected the position taken up by the accused.
- [21] In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in respect of all three counts.
- [22] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences of Sexual Assault and Rape with which the accused is charged in counts 1, 2 and 3.
- [23] In the circumstances, I find the accused guilty of Sexual Assault and Rape as charged, in counts 1, 2 and 3.
- [24] Accordingly, I convict the accused for the offences of Sexual Assault and Rape as charged, in counts 1, 2 and 3.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



AT SUVA

Dated this 16th Day of December 2019

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Accused appears in Person.