

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 260 of 2018

BETWEEN : STATE

AND : RATU SELA DRADRA MATIA

Counsel : Ms K Semisi for the State
Ms S Nasendra & Ms S Daunivesi for the Accused

Dates of Hearing : 11 - 13 March 2019

Date of Summing Up: 13 March 2019

JUDGMENT

[1] The Accused is charged with two counts of rape contrary to sections 207(1) & (2) (a) of the Crimes Act. It is alleged that the Accused had unlawful sexual intercourse with his mother the complainant without her consent on two separate occasions between 2016 and 2017. The alleged incidents arose at Kabariki village in Kadavu – the home of the complainant and the Accused. Following my summing up, the assessors have unanimously found the Accused not guilty of rape on the first count and guilty of rape on the second count. I direct myself in accordance with my summing up.

[2] In our criminal justice system, an accused does not have to prove anything. He is presumed to be innocent until the prosecution proves guilt beyond a reasonable doubt. The Accused elected to remain silent. That is his right and no adverse inference is drawn against him for exercising his constitutional right.

[3] The prosecution led evidence from the complainant, two police officers and a relative of the Accused and the complainant.

[4] The complainant is the mother of the Accused. The Accused is 45 years old. The complainant is 63 years old. She turned hostile on the prosecution saying the allegation that her son raped her is not true. The prosecution was permitted to cross examine her on her previous police statement implicating the Accused to the allegation of rape. She said her police statement was extracted using threats and intimidation by the officer who recorded the statement. Her police statement is not evidence. Evidence is what the witness has said in court from the witness box. Her evidence is that the allegation of rape is not true and that her son the Accused did not rape her. She has clearly changed sides and cannot be considered a reliable witness. Her evidence is of no weight.

[5] The only incriminating evidence against the Accused is his admissions made to police. According to the record of interview, the Accused admits having sexual intercourse with the complainant on two separate occasions while she was asleep. If the admissions are true, then it proves that the Accused had unlawful sexual intercourse with the complainant on two separate occasions without her consent and knowing that she had not consented. The interview of the Accused was conducted by a police officer with 30 years of experience. When the officer administered to the Accused his constitutional right against self-incrimination, it was done so as follows:

Q10: For the purpose of the constitutional rights, you have the rights to remain silent, do not wish to answer the questions, but if you won't answer, we won't be able to know your story, but on the other hand, you can be charged on the allegation. Are you willing to answer the questions or remained silent?

A: I will answer the questions.

[6] Section 13 (1) of the Constitution states that every person who is arrested or detained has the right to remain silent and that the right must be administered promptly, in a

language that the accused understands. In Fiji the constitutional right to remain silent must be administered in unqualified terms. Otherwise, the right will become a dead letter. In the present case, the right to remain silent was qualified by an incentive to tell his side of the story to avoid being charged based on the allegation. The qualifications placed on the right to remain silent are inappropriate and objectionable. The qualifications were placed by an experienced police officer without any justification. The qualifications breached the Accused's constitutional right against self-incrimination. For these reasons, the admissions are disregarded and given no weight.

- [7] The remaining piece of evidence of a relative who witnessed a bizarre incident where the Accused was seen lifting the complainant's skirt up and tearing her pants using a knife while she was asleep, although may indicate a sexual relationship between the mother and son, does not prove that the Accused raped the complainant.
- [8] The prosecution has not discharged the burden to prove guilt beyond a reasonable doubt. As a result, I find the Accused not guilty of both charges and acquit him accordingly.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a dotted line.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Director of Legal Aid Commission for the Accused