

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 276 of 2016

STATE

vs.

KITIONE VAKADRANU

Counsel: Ms. U. Tamanikaiyaroi with Ms. B. Khantaria for the State
Ms. L. David for Accused

Date of Hearing: 5th, 6th and 7th March 2019

Date of Summing Up: 11th March 2019

Date of Judgment: 12th March 2019

JUDGMENT

1. The accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and one count of Criminal Trespass, contrary to Section 387 (1) (a) of the Crimes Act. The particulars of the offences are that:

COUNT ONE

Statement of Offence

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

Particulars of Offence

KITIONE VAKADRANU on the 19th day of July, 2016 at Cunningham, Suva in the Central Division penetrated the vagina of ***INDRA MANI*** with his penis, without her consent.

COUNT TWO

Statement of Offence

CRIMINAL TRESPASS: Contrary to Section 387 (1) (a) of the Crimes Decree 2009.

Particulars of Offence

KITIONE VAKADRANU on the 19th day of July, 2016 at Cunningham, Suva in the Central Division, entered into the property in the possession of ***INDRA MANI*** with intent to commit an offence.

2. The hearing of this matter commenced on the 5th of March 2019 and concluded on the 7th of March 2019. The prosecution presented the evidence of four witnesses, including the complainant. The accused gave evidence on oath and also called two witnesses for his defence. The learned Counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I delivered my summing up.
3. The three assessors, in their opinions unanimously found the accused guilty to the two counts as charged.
4. Having carefully considered the evidence presented by the parties, the closing addresses of the learned Counsel of the prosecution and the defence, the summing up and the opinions of the three assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused broke into the house of the complainant while the complainant was sleeping in the house, during the early hours in the morning of 19th of

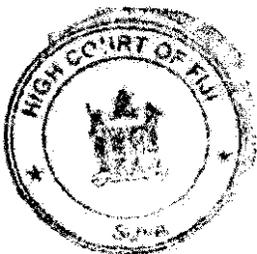
July 2016. He had then threatened her, by holding a knife to her throat, that he would kill her if she shouted. Thereafter, he forcefully had sexual intercourse with her without her consent. Afterwards, he had threatened her that he would kill her as she would tell others about this incident. The complainant had then requested the accused that he can come and have sexual intercourse with her whenever he wants, therefore, not to kill her.

6. The accused relies on the defence of alibi, stating that he was sleeping at his home during the time material to this matter. In order to establish his defence of alibi, the accused gave evidence and also called his father and elder brother to give evidence.
7. The main contention of the defence is that the complainant had mistaken in her identification/recognition of the perpetrator as the defence relies on the defence of alibi. Accordingly, the case against the accused mainly depends on the correctness of the identification of the perpetrator by the complainant.
8. I first draw my attention to the defence of alibi, where the accused claims that he was sleeping at his home during the time that is material to this matter. According to the accused, he came home around 11.00 p.m. with his elder brother and two of his brother's friends. They then had dinner. Thereafter the two friends left. The accused then went out to smoke a cigarette while his brother went to drop his friends at the junction. The brother then came home and went to sleep at the veranda. While he was still smoking his cigarette, his father came home and went into the house. The accused also then went to the veranda and slept beside his brother. The brother in his evidence confirms that his father came home while he was about fallen off to sleep. He further confirmed that he slept at the veranda with the accused and not in the sitting room. However, father of the accused said in his evidence that when he came home, the accused, his elder brother and two friends were having their dinner. The father of the accused further said that he slept in the sitting room with the accused and the brother of the accused.
9. In view of this evidence I find there are few inconsistencies and contradictions between the evidence given by the accused and his two alibi witnesses. Specially, with the evidence of

the father of the accused, where he said that the accused, his brother and the two friends were having dinner when he came home in the night of the 18th of July 2016. However, the accused and his brother said that their father came home after they had dinner and their friends left.

10. Furthermore, the father of the accused said that he slept in the sitting room with the accused and the brother in that night. In contrary to that, the accused and his brother said that they slept in the veranda and not in the sitting room.
11. These inconsistencies are fundamentally important as it goes to very issue that the defence of alibi is based upon.
12. Moreover, the father and the elder brother of the accused admitted that they were not aware whether the accused left the house during the time between 12.30 a.m to 2.00 a.m. in the morning while they were sleeping.
13. In view of these issues, I find that the defence of alibi is not true. I accordingly hold that the defence of alibi is false and refuse to accept it.
14. I now turn into the case of the prosecution. According to the evidence given by the complainant, she knew the accused as a person who used to visit her home in order to drink with her then de-facto partner Rahul. The accused had also come to her house in order to help them when they were building the toilet of the house. The complainant and the accused had not engaged in any activities during those visits of the accused, apart from exchanging of greetings. The accused is not consistent with his evidence pertaining to the visits he made to the house of the complainant. During the evidence in chief, he said that he visited her house only once or twice. However, during the cross examination the accused admitted that he had visited the house of the complainant more than twice. Accordingly, I find there is no dispute between the parties on the fact that the accused and the complainant have met each other on several occasions prior to this incident.

15. The complainant explained about the lighting condition in the house during that early morning hours of the 19th of July 2016. She has observed the accused very closely during a period of 1/2 hours. The face of the accused was very closed to her. Her description about the physical appearance of the perpetrator matches with the accused's physical appearance. Under such circumstances, I find it is safe to accept the evidence of the complainant as credible and reliable evidence. The medical findings of the Doctor Ram match the account given by the complainant about the injuries that caused to her during this ordeal.
16. In view of these reasons, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused was the person who entered into the house of the complainant with the intention to commit the offence of rape in the early hours of the 19th of July 2016. He had then threatened the complainant with a knife and then forcefully had sexual intercourse with her without her consent.
17. Accordingly, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
18. In conclusion, I find the accused guilty to the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and to the offence of Criminal Trespass, contrary to Section 387 (1) (a) of the Crimes Act and convict the accused for the two offences accordingly.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe
Judge

At Suva
12th March 2019

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