

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 61 of 2018

STATE

v

FILIPE KOROI

Counsel : Mrs. A. Vavadakua for the State
: Mr. J. Koroti with Ms.M. Tuiloma (L.A.C.) for the
Accused

Dates of Trial : 19 and 20 March 2019
Date of Summing Up : 21 March 2019
Date of Judgment : 21 March 2019

JUDGMENT

1. The accused has been tried before me and three assessors on one count of rape contrary to section 207(1) and 2(a) and (3), the particulars of which are that on the 18th July 2018 at a village in Cakaudrove he anally raped his 6 year old boy cousin.
2. The three assessors returned with unanimous opinions of guilty of the offence.

3. The evidence of the prosecution was led through the young boy himself, his mother and a Woman' Police Constable.
4. The mother told the Court that she had left the two having dinner and when she returned, she switched on the light in her young son's bedroom to see the two of them on the bed together. The boy's pants were off. The accused immediately got up and left the room and the young boy was crying, telling his mother that the accused had "done something to my back side".
5. The boy himself gave cogent and specific evidence through the sympathetic and careful interpretation by the Court's itaukei interpreter. He told the Court that he remembered the time that he and the accused were on the bed together. A direct quote from his evidence is this: **"He did it on my backside. I felt pain. He inserted it inside. He did it for a short time. The place where to pass out the stool"**.
6. In cross-examination however he appeared to contradict himself by saying that "he did something on the outside and he tried to insert it inside" In my summing up, I told the assessors that it was a factual issue for them to resolve.
7. The WPC produced the record of interview of the accused under caution, the production of which was with the consent of the defence. In that interview the accused admitted to being on the bed with the victim but then gave the breathtakingly absurd explanation, which he repeated in his defence evidence, that the boy instigated the sexual activity and positioned himself to encourage and enable himself to be penetrated by the accused.

8. The accused gave evidence in his defence and called no witnesses. In his defence the accused said that after dinner he was lying on the bed playing with his phone and the boy came and lay beside him. The boy touched him sexually and the accused told him not to do that and turned away. The boy then jumped over to face him and told the accused to lie face up. He undid the accused's trousers and took hold of his penis. He was trying to insert the penis into himself when the mother came into the room.
9. That was the end of the evidence in the trial. Both Counsel exercised their right to make closing speeches.
10. Counsel for the defence stressed that the evidence was of attempt to penetrate, rather than actual penetration. He also relied on his client's evidence that it was all the boys doing that led to penetration.

Discussion

11. Obviously, consent is not an issue when the victim is 6 years old and the only issue to be found is whether there was penetration or not. Even if one were to believe the absurd defence that it was all the boy's doing it doesn't matter if as a result there was penetration.
12. In resolving the seemingly contradictory evidence of the boy (outside or inside?) the Court takes the view that for the boy to be crying and in pain, penetration must have occurred. The Court saw the boy; he was very small and it is preposterous to say that he could force a well built 18 year old to do such an act against the 18 year old's will.

13. I direct myself on my own summing up and I am acutely aware of my duty not to find guilt when I completely discard the evidence of the accused.
14. The evidence of the young boy is convincing enough however for me to be in agreement with the assessors and the Court finds the accused guilty of anal rape and convicts the accused accordingly.
15. That is the judgment of the Court.
16. Mitigation is called for in advance of sentence.



A handwritten signature in blue ink, appearing to read "P. K. Madigan".

P. K. Madigan
Judge

At Labasa

21 March 2019