

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 137 OF 2017

BETWEEN : STATE

AND : NACANIELI NATADRA

Counsel : Mr. J. Niudamu for State
Ms. S. Khan with Mr. T. Kaloulasulasu for the Accused

Date of Hearing : 13th and 14th of May, 2019

Date of Closing Submissions : 14th of May, 2019

Date of Summing Up : 15th of May, 2019

Date of Judgment : 15th of May, 2019

JUDGMENT

1. The name of the complainant is suppressed. Hereinafter she will be referred to as AB.
2. The accused is being charged with one count of Abduction of Young Person, contrary to Section 285 of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act. The particulars of the offences are that;

FIRST COUNT

Statement of Offence

ABDUCTION OF YOUNG PERSON: Contrary to section 285 of the Crimes Act,
2009

Particulars of Offence

NACANIELI NATADRA on the 3rd day of July, 2017 at Lautoka in the Western Division, unlawfully took **SAIVORA JESSIE DAUCAKAKAKA MASALA**, being under the age of 18 years, out of the possession and against the will of her parents.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

NACANIELI NATADRA on the 3rd day of July, 2017 at Lautoka in the Western Division, unlawfully and indecently assaulted **SAIVORA JESSIE DAUCAKAKAKA MASALA**, by licking her vagina.

THIRD COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (b) of the Crimes Act, 2009.

Particulars of Offence

NACANIELI NATADRA on the 3rd day of July, 2017 at Lautoka in the Western Division, inserted his tongue into the vagina of **SAIVORA JESSIE DAUCAKAKAKA MASALA**, without her consent.

3. The hearing commenced on the 13th of May 2019 and concluded on the 14th of May 2019. The prosecution presented the evidence of four witnesses, including the complainant. The accused decided not to give evidence, but he presented the evidence of three witnesses for the defence. At the end of the hearing, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up.


4. The three assessors in their respective opinions unanimously found the accused guilty to all three counts as charged.
5. Having carefully considered the evidence adduced during the hearing, the respective closing address of the counsel, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
6. The prosecution alleges that the accused had abducted the complainant while she was going to the shop and then took her to a location in his black colour twin cab bearings registration number HV 510. He had then licked her vagina and then penetrated her vagina with his tongue without her consent. The defence denies the allegation and said that the accused was at home attending the family devotion with the family during the time material to this allegation. Accordingly, the case against the accused mainly depends on the correctness of the identification of the perpetrator by the complainant.
7. The complainant in her evidence said that she saw the black twin cab with a pipe fixed at its front side, bearing the registration number HV 510 when she walked towards to the shop in the evening of 3rd of July 2017. The complainant had observed the accused during the entire episode of this incident. According to her evidence, the complainant had seen the accused when they went past the Total service station. He was very close to her, when he licked and inserted into her vagina with his tongue. After the incident, she was seated next to him until he brought her to the location where he pushed her away from the vehicle.
8. The complainant had identified the accused as the person who committed these offences to her two days after the alleged incident. That was on the 5th of July 2017.

She identified the accused, when he was seated among the crowd at the old Lautoka Market. The wife of the accused in her evidence said that he was at home when she arrived after 7.30 p.m. The complainant had left home after around 6.45. p.m. According to the complainant, the accused had licked her vagina for about 30 minutes. The house of the accused is located just five to ten minutes' drive from Field 40. Moreover, the wife of the accused said that the accused had been using the black twin cab with the pipe fixed at the front, bearing the registration number HV 510 during that particular afternoon.

9. In view of these reasons, I do not find any reasonable doubt in the evidence of identification. Hence, I find that the complainant had accurately identified the accused as the person who committed these crimes to her on the 3rd of July 2017. In view of these reasons, I am satisfied that the prosecution has successfully disproved the defence of alibi taken by the accused. Taking into consideration above conclusion, I accept the evidence given by the complainant as reliable, credible and truthful evidence.
10. Accordingly, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors in respect of these three counts.
11. In conclusion, I find the accused guilty to each of these three counts as charged in the information and convict him to the same accordingly.



15th of May, 2019


R. D. R. Thushara Rajasinghe
Judge