

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 218 OF 2016

BETWEEN : STATE

AND : INOKE VOCEVOCE

Counsel : Mr. J. Niudamu for State
Ms. K. Vulimainadave for the Accused

Date of Hearing : 27th of May, 2019

Date of Closing Submissions : 27th of May, 2019

Date of Summing Up : 28th of May, 2019

Date of Judgment : 29th of May, 2019

J U D G M E N T

1. The accused is being charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offence are that;

Count One
Statement of Offence

RAPE: contrary to section 207 [1] and [2] [b] of the Crimes Decree 44 of 2009.

INOKE VOCEVOCE on the 16th day of September 2016 at Balekinaga, Nakorotubu, Ra in the Western Division, penetrated the vagina of LISI TAKAYAWA with his penis, without the consent of the said LISI TAKAYAWA.

2. The hearing commenced on the 27th of May 2019 and concluded on the same day. The prosecution adduced the evidence of three witnesses, including the complainant. The accused exercised his right to remain silent, hence no evidence was adduced for the defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then proceeded to deliver my summing up.
3. The three assessors, in their opinion, unanimously found the accused guilty to this offence of Rape as charged.
4. Having carefully taken into consideration the evidence presented during the course of the hearing, the respective closing addresses of the counsel, 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 had forcefully inserted his penis into the vagina of the complainant without her consent on the 16th of September 2016, while she was alone at home. Her parents had gone to the farm on that day. The defence proposed to the complainant during the cross examination that such an incident never took place. The complainant in her answers refused the said proposition.
6. The complainant was alone at home when the accused came and pulled her into the bedroom. He had covered her mouth, however, he had undressed her and also himself. Had he been covering the mouth of the complainant during the whole of this incident preventing her to shout, would it possible for him to undress the complainant and himself? The complainant did not explain the manner the accused undressed her and himself. There is no evidence of what kind of dress that the complainant was wearing at that time. If such evidence is presented, it would have been convenient to determine what the complainant said in her evidence is probable or improbable. There is no evidence to suggest that the accused had threatened her

not to shout or alarm others. The learned counsel for the prosecution did not elicit the evidence of the complainant in respect of the state of her mind when this alleged incident was unfolding. Was she scared and could not react to the conduct of the accused with the confusion or shock?

7. Even after the incident, the accused had not threatened her not to tell anyone about this incident. However, she had taken nearly a month to reveal this matter to her teacher. Once again, the prosecution did not present any evidence to explain the reason for such a delay. Was she scared, embarrassed, felt ashamed or any other reasons that prevented her from relating this incident to someone whom she could trust and have confident in.
8. According to the teacher, the complainant had told her that a boy had tried to touch her private parts and also tried to have sexual intercourse with her. The teacher had then informed the matter to the head teacher, who had subsequently informed the parents of the complainant. However, the parent had not taken any steps to report the matter to the police. It was the head teacher who eventually reported the matter to the police. The prosecution did not present any evidence to explain the reasons for such a delay in reporting the matter firstly to the teacher by the complainant then to the police by the parent of the complainant.
9. In view of these reasons, it appears to have a reasonable doubt about the reliability and credibility of the evidence given by the complainant. Accordingly, I find the prosecution has failed to prove beyond reasonable doubt that the accused had inserted his penis into the vagina of the complainant without her consent. Hence, I have cogent reasons to disagree with the unanimous opinion of the three assessors.
10. In conclusion, I find the accused not guilty to the offence of Rape, contrary to Section


207 (1) and (2) (a) of the Crimes Act and acquit from the same accordingly.

11. Thirty (30) days to appeal to the Fiji Court of Appeal.



At Lautoka

29th May, 2019


R. D. R. Thushara Rajasinghe
Judge

Solicitors : Office of Director of Public Prosecution
Office of the Legal Aid Commission