

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 93 of 2016

STATE

V

MANUELI VUNIBOLA KOROIBETE

Counsel	:	Mr. J. Niudamu for the State.
	:	Ms. J. Singh [LAC] for the Accused.
Dates of Hearing	:	06, 07, 08 May, 2019
Closing Speeches	:	08 May, 2019
Date of Summing Up	:	08 May, 2019
Date of Judgment	:	09 May, 2019

JUDGMENT

(The name of the complainant is suppressed she will be referred to as “ST”).

1. The Director of Public Prosecutions charged the accused by filing the following information:

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

MANUELI VUNIBOLA KOROIBETE, on the 5th day of June, 2015 at Nativi Village, Saivou, Ra in the Western Division, penetrated the vagina of '**ST**' with his penis without the consent of the said '**ST**'.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of one count of rape as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called three (3) witnesses and the accused exercised his right to remain silent and did not call any witness.
5. On 5th June, 2015 the complainant was 16 years of age and a high school student. She was asked by her mother to get a bucket of clothes from the river in the village. At about 7 pm on her way to the river the complainant went past the village hall kitchen at this time she noticed light inside the hall. She entered the hall to see which light was switched on and who was inside the kitchen hall.
6. As the complainant entered the hall the accused grabbed the complainant's hand and forcefully made her lie down. He forcefully removed her panty and then forcefully inserted his penis into her vagina and had sex for about 5 minutes. The accused stopped having sexual intercourse when some people came near the hall at this time the accused ran away from the hall. Thereafter the complainant wore her panty and went home. The complainant did not do anything since she was afraid of the accused.
7. At school the complainant told her friend about what the accused had done to her thereafter she was taken to the School Chaplain. The complainant

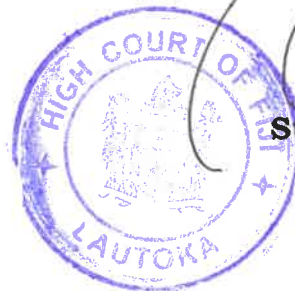
said that she did not tell her parents about what the accused had done to her since she was afraid of them.

8. At night no one was allowed to go in the village hall kitchen. The complainant stated when the accused was removing her panty she could not do anything such as yell or scream for help because she was afraid of the accused and also she did not want anyone to know that she was inside the hall. The complainant did not consent to have sexual intercourse with the accused.
9. Neomai Bale the School Chaplain informed the court on 24th June, 2015 a student came and informed her that the complainant was sick. When the complainant came into the room the witness observed the complainant was sad and crying. The complainant was not looking at her in the eyes and was looking embarrassed. After a while the complainant told the witness that a boy by the name of Manueli from her village had raped her in a vacant house. When the complainant was telling this the witness noticed that the complainant looked relieved but was shivering.
10. The witness then took the complainant to the Nalawa Police Station to report the matter.
11. On 25th June, 2015 Dr. Krishneel Sharma had examined the complainant at the Rakiraki Hospital. The professional opinion of the doctor was loss of virginity with the loss of hymen membrane.
12. The defence takes up the position that the accused and the complainant had consensual sexual intercourse in the village hall kitchen that evening. The complainant came willingly into the hall where the accused was. When inside the hall both the complainant and the accused took off their clothes and had consensual sex. At around 7 pm that evening there were lots of

people moving around the village the complainant did not yell or scream for help or try to run away because she did not want anyone to know that she was in the hall.

13. I accept the evidence of all the prosecution witnesses as truthful and reliable. The complainant was able to recall what the accused had done to her some four years ago. My observations of the complainant have been that she was a simple, shy and unsophisticated villager. The demeanour of the complainant was consistent with her honesty. The complainant was able to withstand cross examination and was also not discredited. I have no doubt in my mind that the complainant told the truth in court.
14. The School Chaplain also told the truth when she narrated what the complainant told her about 19 days after the alleged rape on 24th June, 2015. The delay by the complainant in complaining to anyone about the alleged rape does not affect the credibility and reliability of the complainant's evidence. A 16 year old simple and shy person of the complainant's attribute cannot be expected to immediately inform her peers, friends and families all the details of her forceful sexual encounter by a fellow villager and cousin.
15. Although during cross examination Neomai had stated the date the complainant had told her about the alleged rape by the accused was 30th May, 2015 does not also create any doubt on the complainant's evidence. According to the admitted facts filed the alleged rape happened on 5th June, 2015. It is untenable that the School Chaplain was told of the alleged rape on the 30th May, 2015 when the alleged rape happened on 5th June, 2015.
16. Furthermore, the fact that the complainant did not yell or shout for help or try to run away from the hall before and during the alleged rape does not affect the reliability of the complainant's evidence. This court accepts the complainant was afraid of the accused at the time.

17. The defence has not been able to create any reasonable doubt in the prosecution case.
18. I am satisfied beyond reasonable doubt that the accused on 5th June, 2015 penetrated the vagina of the complainant with his penis without her consent.
19. I also accept that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
20. I agree with the unanimous opinion of the assessors that the accused is guilty of one count of rape as charged.
21. In view of the above I find the accused guilty of the count of rape he is charged with and I convict him accordingly.
22. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka
09 May, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.