

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 160 OF 2016

BETWEEN : STATE

AND : RAJIV KUMAR

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

Date of Hearing : 28th and 29th of May, 2019

Date of Closing Submissions : 29th of May, 2019

Date of Summing Up : 30th of May, 2019

Date of Judgment : 30th of May, 2019

J U D G M E N T

1. The accused is 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

Statement of Offence

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

Particulars of Offence

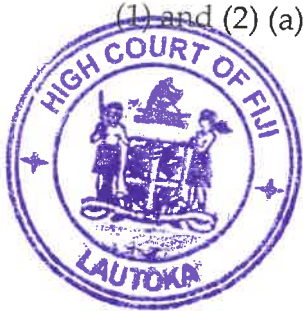
RAJIV KUMAR, on the 7th day of August 2016 at Wananavu Island Resort, Rakiraki, Ra in the Western Division, penetrated the vagina of TALICA KUMI with his penis, without the consent of the said TALICA KUMI.

2. The hearing commenced on the 28th of May 2019 and concluded on the 29th of May 2019. The prosecution presented the evidence of three witnesses, including the complainant. The accused gave evidence for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I made my summing up.
3. The two assessors found in their respective opinions that the accused guilty to the offence of rape while one assessor found the accused not guilty.
4. Having taken into consideration the evidence presented during the course of the hearing, the respective closing addresses of the prosecution and the defence, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused had taken the complainant to the house of Binesh and forced her to drink beer mixed with whisky. He had forced the complainant to come with him saying that he is the boss of her. Once the complainant got drunk and lost her conscious, he had taken her into his quarters and had sexual intercourse with her by inserting his penis into her vagina. According to the agreed facts and the evidence presented by the defence, the accused admitted that he and the complainant consumed alcohol at the house of Binesh and then came to his quarters.

The accused then had sexual intercourse with her. The accused claims that the complainant consented to the sexual intercourse as she also actively participated in it.


6. Accordingly, the main dispute that the court has to determine is whether the complainant gave her consent to the accused to insert his penis into her vagina or whether she was in a position to feebly and voluntarily give her consent to have sexual intercourse with the accused. Moreover, the court is required to determine whether the accused knew or believed or reckless that the complainant was not consenting for him to insert his penis in that manner.
7. According to the evidence of Setareki, the complainant was drunk and lifeless when she came into the quarters and fell down at the door. The accused had then pulled and dragged her into the room. The accused in his evidence said that the complainant had not fallen down, but actually tripped off while she climbed the steps. However, this version of the event explained by the accused was never put to Setareki, when he gave evidence.
8. Accused in his evidence admitted that the complainant consumed alcohol at the house of Binesh. According to the version of the accused they have consumed six bottles of beer and a bottle of wine, however the complainant said it was beer mixed with whisky. Moreover, the accused in his evidence admitted that when Makelesi came and knock on the door in the morning, he was still on the top of the complainant.
9. I do not find any reasons to disbelieve the evidence of the Setareki in relation to the condition of the complainant when she entered into the quarters.

10. Moreover, I have taken my attention to the fact that the complainant had not informed this matter first to her cousin and his wife and then to the police when she travelled to the town with the police. It is clear that her cousin and his wife were angry with her as she did not inform them her whereabouts when she went to the party with the accused. The complainant explained in her evidence that she was afraid to relate about this incident to her cousin as he was still in angry with her. She further said that she was ashamed and embarrassed to relate the incident to the police. I am satisfied that the complainant had given an acceptable explanation for not telling the matter to her cousin and then to the police before she related it to her mother.
11. In view of these reasons, I accept the evidence of the complainant is true, reliable and credible evidence. I accordingly find the prosecution has successfully proven beyond reasonable doubt that the complainant had not given her consent to the accused to insert his penis into her vagina. Therefore, I do not find any cogent reasons to disagree with the majority opinion of guilty given by the two assessors.
12. 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 convict him to the same accordingly.



At Lautoka

30th May, 2019


R. D. R. Thushara Rajasinghe
Judge

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