

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 89 of 2018

[CRIMINAL JURISDICTION]

STATE

V

LINO FEREI

Counsel : Ms. S. Kiran and Ms. S. Sharma for the State
Ms. L. Vaurasi and Mr. V. Seduadua for Accused

Hearing on : 27- 31 May 2019

Summing up on : 03 June 2019

Judgment on : 03 June 2019

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

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

Particulars of Offence

LINO FEREI on the 20th day of February, 2018 at Nasinu, in the Central Division penetrated the vagina of MAKI RAIJELI SOSEFO by inserting his finger into the vagina of MAKI RAIJELI SOSEFO, without her consent.

2. The assessors have returned with the unanimous opinion that the accused is guilty as charged.
3. I direct myself in accordance with the summing up delivered to the assessors this morning and the evidence adduced during the trial.

4. The prosecution called three witnesses including the complainant. The accused gave evidence and called three witnesses in his defence.
5. According to the complainant, she woke up on 20/02/18 upon hearing a sound ("door bang") and then the accused was in her room pulling her pants. When she opened her eyes, the accused was on top of her with his finger inside her vagina. She pushed the accused and the accused pushed her back and the accused placed his hands on her sides to prevent her from moving. She said the accused was moving his finger inside her vagina to arouse her and he did this for about 15 to 20 minutes. In the process he also kissed her. She said that at this time only the accused was at home and she knows that the accused's father, the mother and the two siblings leave the house around 6.30am to catch the 6.30 bus.
6. The fact that she pushed the accused, the fact that she was looking at the wall crying while the accused was penetrating her vagina, clearly indicates that she did not consent for the accused to penetrate her vagina with his finger and it is clear that the accused knew that she was not consenting.
7. According to the complainant this incident started after 6.30am. The accused's evidence was that others living in the house apart from the complainant left the house at 6.30am. The accused's father also confirmed that he left with the others between 6.30am and 6.35am and while they were leaving the accused was awake and the complainant was sleeping.
8. Given all the evidence led in this case, I accept the evidence of the complainant with regard to her encounter with the accused as credible and reliable. When the evidence is taken in its entirety, the complainant's evidence that she was asleep when she woke up to the banging sound of a door and then her evidence that when she opened the eyes, the accused was on top of her with his finger inside her vagina, does not suggest that she had made up a story. In my view, this evidence was not about the accused's super-speed as the defence counsel tried to put it across by raising a question as to whether it is possible for the accused to

be in the room the same time the accused closed the door and to remove the complainant's pants and insert the finger inside her vagina before she opened the eyes.

9. It was manifestly clear that this is how the complainant who happened to wake up to a loud sound perceived and then remember the events that took place up to the point she managed to open her eyes. The assessors with their experience and common sense seems to have shared the same view in unanimously finding the accused guilty based on the complainant's evidence.
10. I accept the evidence of the second prosecution witness that the complainant made a complaint to her about what the accused did to her. I find the inconsistency with regard to the time which this complaint was made and the slight inconsistency between the evidence of the complainant and the evidence of the second prosecution witness with regard to what the complainant told her to be immaterial. The complaint made by the complainant to the second prosecution witness contains sufficient information regarding the alleged conduct of the accused. This was a prompt complaint. Therefore, the complainant's credibility is strengthened in view of the recent complaint made to the second prosecution witness.
11. I accept the medical evidence given by the third prosecution witness. Accordingly, there were no fresh injuries to the hymen. But the doctor explained that the absence of injuries given the complainant's age and the fact that there were two healed hymenal lacerations cannot rule out recent penetration. The abrasion observed below the vaginal opening which could have been sustained during the period between 4 to 7 days is consistent with a foreign object penetrating the complainant's vulva during the time material to the case. It is pertinent to note that the medical evidence is not conclusive as far as the charge against the accused is concerned. However, the medical evidence is not inconsistent with the complainant's evidence which I have found to be credible and reliable.

12. In my view the second defence witness was not a reliable witness. He could not remember the time he left the house on 20/02/18 when he gave statements to police on 20/04/18 and on 23/07/18, but he could remember when he gave evidence in court that he left home around 6.35am and was waiting for the 7.00am bus. But he did say that he cannot remember the exact time he met the accused on 20/02/18.
13. The third defence witness also could not say the exact time she saw the accused at Valelevu Health Centre. But her evidence was that she saw the accused around 8.00am or after 8.00am.
14. Considering all the evidence I do not find the evidence of the accused that he left his house at 6.45am after meeting the second prosecution witness to be credible and reliable.
15. All in all I am satisfied beyond reasonable doubt that the prosecution has proved the offence the accused is charged with beyond reasonable doubt.
16. Therefore, I agree with the unanimous opinion of the assessors. I find the accused guilty of rape as charged and I hereby convict him accordingly.



A handwritten signature in blue ink, appearing to read "Vincent S. Perera". The signature is stylized and cursive.

Vincent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State
Shekinah Law, Suva for the Accused