

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 115 of 2015

BETWEEN : STATE

AND : MOAPE DAVETA DELANA

Counsel : Ms Uce for the State
Mr Tunidau for the Accused

Dates of Hearing : 27 & 28 August 2019

Closing Speeches : 29 August 2019

Date of Summing up: 30 August 2019

Judgment : 02 September 2019

JUDGMENT

1. The Accused is charged with one count of rape contrary to Section 207(1) and (2)(a) of the Crimes Act 2009. The particulars of offence are as follows;

Moape Daveta Delana the 13th day of June 2015, at Nadi in the Western Division, penetrated the vagina of Paulini Daulakeba, with his penis without the consent of the said Paulini Daulakeba.

2. The Accused pleaded not guilty to the Information filed by the Director of Public Prosecutions and the case was taken up for trial on 27 August 2019. The complainant gave evidence and no other witnesses were called for the prosecution. The Accused and another witness gave evidence after the prosecution case was closed.
3. At the end of the trial the assessors returned with a unanimous opinion that the Accused is guilty to the offence of rape.
4. Having directed myself in accordance with the summing up I will now review the evidence in this case to pronounce my judgment.
5. In this case, consent was the only disputed issue. As per the amended admitted facts the Accused has admitted that he had sexual intercourse with the complainant on 13 June 2015. However, the Accused contended that the complainant consented to have sexual intercourse.
6. I have considered the evidence given by the complainant, Paulini Daulakeba. She said that she went to a shop to buy a CD and when she returned it was after 8 pm. When she returned, the sitting room had been closed and all had gone to sleep. Then she had gone to the kitchen and had slept in a bed there. Under cross examination the complainant said that she went to the shop around 7pm to 8 pm. She admitted that it takes only about 10 minutes to walk to the shop. However, the complainant said that she was at the shop for about 2 hours for a CD to be processed. Although the complainant initially said that when she came home everyone was asleep, later she said that the Accused finished drinking grog at about 9 pm. She said during re-examination that it was around 9 pm when she returned home and that was when the Accused left home with one Taito. Although the complainant said that everyone had gone

to sleep, and the sitting room was closed it appears that the Accused and Taito had been at home when she arrived. In contrary to that, she again said that everyone had gone to sleep when she came home, and she even called out for them to open the sitting room door. The prosecution did not clarify as to how she came to know that the Accused finished drinking grog at 9 pm, if everyone had gone to sleep when she arrived home.

7. The complainant said that they had a conversation while the Accused was on top of her. The Accused had asked whether they can have sexual intercourse and the complainant had said that they cannot have sexual intercourse as he is a married man and she is a student. Although she said that she was scared, the prosecution did not lead evidence as to why she was scared, when other people were also present in the house. She did not say that the Accused threatened her or intimidated her. It appears that she had had a conversation with the Accused. But she had not called for help. The reason she gave was that she thought that the Accused would do something to her. Later when she was asked again as to why she did not call for help the complainant said that there was no one at home. She explained again that what she meant by no one was at home was that the others were sleeping in the sitting room. She said that the distance to where the others were sleeping is similar to the distance from the witness box to the assessors table.
8. When she was asked as to why she did not push the Accused, she said that the Accused is a big and a strong person. However, I have taken judicial notice that the Accused is a person of average built. The complainant said that soon after the incident she went and started crying. She said that an unknown man showed up and she informed that person about the incident. That person had told her to go to the Police station. However, the complainant had not informed about the incident to any of her family members in the morning. She had thought they would not believe her. When the complainant was cross examined, she said that she followed the wife of the Accused with one of her cousins "that afternoon". It was not clarified as to why she followed the wife

of the Accused that afternoon without complaining about the alleged incident to someone.

9. The Accused is indicted for a serious offence and it is the duty of the prosecution to prove the offence against the Accused beyond reasonable doubt. Sexual offences do not require corroborative evidence. However, the complainant's evidence must be credible and reliable for the court to act upon.
10. I am not satisfied that the evidence of the complainant is credible and reliable. Her explanations did not seem probable and she gave inconsistent evidence. In the circumstances a reasonable doubt is created in the prosecution case in respect of the issue of consent.
11. For the forgoing reasons I am not inclined to agree with the unanimous opinion of the assessors. I decide that the prosecution failed to prove the offence against the Accused beyond reasonable doubt.
12. I find the Accused not guilty to the offence of rape and acquit him accordingly.




Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Kevueli Tunidau Lawyers