

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 222 OF 2017

BETWEEN : **STATE**

AND : **PITA RARA**

Counsel : *Mr. T. Tuenuku for the State*
Ms. A. Bilivalu for the Accused

Hearing on : *19th of October 2020*

Summing up on : *21st of October 2020*

Judgment on : *06th of November 2020*

JUDGMENT

1. The accused, Pita Rara is charged with a count of Rape, alleged as detailed below to have committed on Akanisi Suguturaraga who is his sister-in law.
2. The details of the offence that he was charged by the Director of Public Prosecutions are as follows;

COUNT

Statement of Offence

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

Particulars of Offence

Pita Rara, between the 2nd day of December 2017 and 3rd day of December 2017 at Ba, in the Western Division, penetrated the vagina of Akanisi Suguturaga with his tongue, without the consent of the said Akanisi Suguturaga.

3. The accused pleaded not guilty to the charge and the ensuing trial lasted a day. The complainant Akanisi Suguturaga and Dr. Varanaisi Talai gave evidence for the prosecution while the accused remained silent exercising his constitutional right and called a witness Ms. Lusiana Dakuroko, on his behalf.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged count of Rape.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.
6. The sole witness to substantiate on the alleged incidents is the PW1, Akanisi Suguturaga. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

Analysis

7. It is admitted by the Accused that he licked the vagina of the complainant on the alleged day. Therefore, the only question is whether it was done with her consent or not.
8. As far as consent of the PW1 is concerned it is her word against the accused's. It is not disputed that the PW1 was drunk that night. She has vomited twice before the alleged incident. Then the question is would such a person consent to have sex. Further, it is evident that she has been a virgin up to then and she valued her virginity much. Though it is not evident whether her hymen is intact or not, it is apparent she was worried that she has lost her virginity. As for her evidence she

has asked the accused thrice whether he has done it to her. Having listened to the PW1 and having observed her demeanor I am convinced that her evidence is credible and reliable.

9. The medical evidence established that labia is a part of the vagina and as for the PW1, she has felt him inside her vagina. As for the law, the slightest penetration is sufficient and I am satisfied that the accused has penetrated the vagina of the complainant.
10. I will reconsider the version of the accused. He remained silent and his version was presented through the cross examination and the defence witness. I am very much mindful that the accused bears no burden of proof. Even if he has lied, it should not be considered in order to strengthen the prosecution case.
11. The evidence of the defence witness has many inconsistencies. She tried to deliberately deviate from her statement to the police on many of the vital issues. As for her evidence, the relationship between the PW1 and her was strained after the alleged incident. The witness herself has punched the accused, suspecting him to have committed a wrong on the complainant. The witness having come home opening the locked gate, has called the accused from the front and thereafter has gone to the back door and called him. He has taken some time to come and open the door. If the alleged act was done with the consent of the PW1, she has had enough time to wear her panty properly and wear her pants. It is apparent that the accused has lifted her pants and put the buckle in a hurry.
12. Therefore, there exists no doubt that the accused has committed this alleged offence.
13. In my view, the prosecution has proved their case beyond reasonable doubt and assessors were correct in finding the accused 'guilty'. Therefore, I agree and concur with the unanimous opinion of the assessors. I confirm the opinion of the assessors and find the accused guilty of the alleged count of rape.
14. In result, I convict the accused of the alleged count of Rape.
15. This is the Judgment of the Court.



Chamath S. Morais

Chamath S. Morais
JUDGE

Solicitors for the State : *Office of the Director of Public Prosecutions*
Solicitors for the Accused : *Messrs. I. Khan & Associates, Lautoka*