

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 121 OF 2019

STATE

V

PAULIASI BALEIWAKAYA

Counsel: Ms. K. Semisi for State
Ms. M. Ratidara for Defence

Date of Summing Up: 24 January 2020
Date of Judgment : 27 January 2020

(Name of the complainant is suppressed. She is referred to as LC. Reporting restrictions prohibits the publication of the applicable information to the public or any section of the public in writing, in a broadcast or by means of the internet, including social media)

JUDGMENT

1. The Accused was charged on the following information:

Count 1

Statement of Offence

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

Particulars of Offence

PAULIASI BALEIWAKAYA on the 22nd day of March 2019 at Suva in the Central Division penetrated the vagina of LC, with his tongue without her consent.

Count 2

Statement of Offence

ATTEMPTED RAPE: Contrary to section 208 of the Crimes Act, 2009.

Particulars of Offence

PAULIASI BALEIWAKAYA on the 22nd day of March 2019 at Suva in the Central Division, attempted to penetrate the mouth of **LC** with his penis, without her consent.

Count 3

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

PAULIASI BALEIWAKAYA on the 22nd day of March 2019 at Suva in the Central Division, unlawfully indecently assaulted **LC** by touching her vagina, kissing her mouth and touching her breasts.

2. At the end of the Prosecution's case, the Court decided that there is no case for the accused to answer in respect of the 2nd count thus the accused was acquitted of the 2nd count. The Accused was put to his defence and the trial proceeded in respect of the 1st and the 3rd counts.
3. After the Summing -Up, the Assessors returned with an unanimous opinion that the Accused is guilty on each count. Having taken into account the opinion of the Assessors and the evidence led in trial, I pronounce my judgment as follows.
4. The Prosecution called two witnesses, the complainant and Vilimone, the controller of the security company she worked for. The complainant was a security guard and the Accused was a supervisor in the same security company. As a supervisor, the Accused was in a position of authority *vis-a-vis* the complainant. On the material day, the complainant was assigned to Naqa Fashion as a stand-by lone security guard for a night shift. She was new to the company and it was the first time that she was assigned to this four storied Naqa Fashion building as a security guard.

5. The Accused, as per his evidence was supposed to do two rounds of checks per a night to see if the security guards were sleeping during working hours. For the first round of checks he had gone to Naqa Fashion with Eremodo who was the supervisor for the Suva area. It was on this check-up that the Accused had discovered that the complainant was assigned to this particular site. After completing the first check-up at around 8pm, the accused, according to his own evidence, had gone alone to this site at around midnight to check on the complainant, leaving behind Eremodo in the Suva office. According to Vilimone, the accused was supposed to supervise a site at the Tobacco Company at Nabua that night and not at Naqa Fashion building, which fact the accused denies.
6. It is not disputed that the complainant was sleeping and the main gate was not properly locked when the accused entered the Naqa Fashion on his second visit. The accused had warned the complainant that these security lapses could lead to a suspension or even termination of her service. The complainant admits that she apologized and said 'sorry' to the Accused. There can be no doubt that the complainant under these circumstances was in a vulnerable situation and it was in this context that the alleged rape and sexual assault had taken place.
7. According to complainant's evidence, she had informed Vilimone soon after the alleged incident that the Accused had done something to her in the toilet and that she wanted to go to the police station to lodge a complaint. According to Vilimone, the complainant sounded frightened and she was crying when he heard the complainant. She was not however permitted by Vilimone to leave the premises and go to the police station until her reliever reported for the morning shift. The complainant had lodged a prompt report with the police soon after she knocked off early in the morning at around 7 am. Although the complaint she made to Vilimone does not contain anything of sexual nature, it supported the version of the complainant.
8. Vilimone had rung-up the complainant at 2 am but she had not picked the phone. The complainant's evidence is that when the telephone was ringing, she could not reach out to pick the phone as she was being tightly held by the accused who was licking her vagina. She further testified that, upon hearing the phone ringing, the accused had given up the assault and left her. Vilimone had gone to check on the Naqa Fashion building when his 2 am call did not get any response form the complainant. On this visit, Vilimone had seen the accused's car parked near the Naqa Fashion building although the Accused was assigned to supervise the tobacco


company in Nabua that morning. Vilimone confirmed that the Accused was at Naqa Fashion Building after 2 am and not around midnight as the Accused said.

9. Vilimone is an independent witness. He has given a reasonable explanation why he did not tell the police that he had received a complaint from the complainant when he called her at 3 am. His evidence is acceptable and believable.
10. The Accused does not deny that he tapped and woke the complainant up at around 12.30 am on 22 March 2019 but he denies touching her breasts and vagina or licking or putting his tongue inside her vagina. The Defence Counsel proposed that the complainant had lodged a report with police because she feared that the Accused will complain about her lapses in her security duties and she lose her job. However the complainant denied this proposition and said that she never reported for work after this incident. The Accused and Vilimone confirmed that no report against the complainant was lodged with the security company. The complainant's conduct indicates that she did not mind losing her job.
11. The Accused, on the other hand, in his evidence, took a different stand and says that the complainant made up this allegation after seeing the text message she had received from Vilimone. The text message had been sent to the complainant when she was not picking the phone. By the time the text message was sent, Vilimone had realised that the Accused had gone to Naqa Fashion Building. Vilimone admitted that the text message read "I saw what you're doing and I will complain in the office". It appears that when the text message was sent, Vilimone had come to a wrong conclusion upon seeing the Accused at a wrong place. The assessors did not believe that the text message had prompted the complainant to make up this serious allegation against the Accused. I agree with the opinion of Assessors.
12. The evidence of the Accused that he had acceded to the demand of the complainant, who was his subordinate, for him to accompany her to make two rounds of extra checks in the building when he was already assured in his previous check-up that the building was secure is unbelievable. It appears that the Accused made up this story to justify his long stay in Naqa Fashion Building.
13. I observed the demeanour of the complainant. She was forthright in her answers. Her

evidence is consistent with that of Vilimone. The version of events of the Prosecution is credible and believable. It is open for the Assessors to form the opinion they did. I accept the version of the Prosecution and reject that of the Defence.

14. There is credible evidence beyond reasonable doubt that the Accused had penetrated complainant's vagina with his tongue without complainant's consent. The Accused is guilty of Rape as charged. The Prosecution proved that the Accused had touched and played with complainant's vagina with his hand. The accused is guilty of Sexual Assault.
15. The Prosecution proved both counts beyond a reasonable doubt. The Accused is found guilty on each count as charged. The Accused is convicted accordingly.
16. That is the judgment of this court.




Aruna Nuthge
Judge

At Suva

27 January 2020

Solicitors:

Office of the Director of Public Prosecution for State
Legal Aid Commission for Defence