

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 56 OF 2014

BETWEEN : STATE

**AND : 1. EPELI NARARA
2. LIVAI SAUKURU
3. MAIKA TUIDRAVU
4. PAULIASI DEGEI
5. SAIRUSI TAMANISOLEVU
6. SULIASI BALEITAVEA**

**Counsel : Ms. S. Naibe with Ms. R. Uce for the State
1st Accused appears in Person
Mr. W. Rosa for the 2nd to 6th Accused**

Hearing on : 04th of June 2020 – 09th of June 2020

Summing up on : 12th of June 2020

Judgment on : 18th of June 2020

JUDGMENT

1. The accused, were charged with 6 counts of Rape. They pleaded not guilty to their respective charge and the matter was taken up for trial.
2. The charges were;

COUNT 1

Statement of Offence

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

Particulars of Offence

Epeli Narara, on the 21st day of April 2014, at Naboutolu Village, Rakiraki, in the Western Division, had carnal knowledge of Laisa Naileqe, without the said Laisa Naileqe's consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

Livai Saukuru, on the 21st day of April 2014, at Naboutolu Village, Rakiraki, in the Western Division, had carnal knowledge of Laisa Naileqe, without the said Laisa Naileqe's consent.

COUNT 3

Statement of Offence

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

Particulars of Offence

Maika Tuidravu, on the 21st day of April 2014, at Naboutolu Village, Rakiraki, in the Western Division, had carnal knowledge of Laisa Naileqe, without the said Laisa Naileqe's consent.

COUNT 4

Statement of Offence

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

Particulars of Offence

Pauliasi Degei, on the 21st day of April 2014, at Naboutolu Village, Rakiraki, in the Western Division, had carnal knowledge of Laisa Naileqe, without the said Laisa Naileqe's consent.

COUNT 5

Statement of Offence

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

Particulars of Offence

Sairusi Tamanasolevu, on the 21st day of April 2014, at Naboutolu Village, Rakiraki, in the Western Division, had carnal knowledge of Laisa Naileqe, without the said Laisa Naileqe's consent.

COUNT 6

Statement of Offence

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

Particulars of Offence

Suliasi Baleitavea, on the 21st day of April 2014, at Naboutolu Village, Rakiraki, in the Western Division, had carnal knowledge of Laisa Naileqe, without the said Laisa Naileqe's consent.

3. The ensuing trial lasted for 4 days. The complainant Laisa Naileqe and Inspector Makitala Masira who recorded the complaint after the alleged incident, gave evidence for the prosecution while the 2nd accused gave evidence in their defense.

4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to all the alleged counts of Rape.

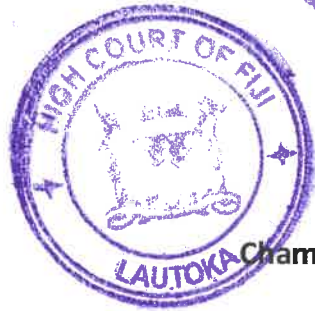
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.

Analysis

6. When analyzing the evidence I am mindful that only direct evidence which relates to the alleged incidents is the evidence of the PW1. I am also mindful that law does not require any corroboration of the complainant's evidence as per section 129 of the Criminal Procedure Act. Therefore, the ultimate question would be whether her evidence would be trustworthy and reliable.
7. The PW1's evidence is not very clear. There are many contradictions apparent. She gives inconsistent answers in relation to many of the important points and refrains from answering many important questions. Her evidence differs considerably from her statement to the police. Furthermore, her version of events contains many improbabilities and has many inconsistencies *inter-se*. The prosecution case is very weak. It would be too dangerous to rely on the PW1's evidence. The accused's evidence and their version of events create a substantial doubt in the weak prosecution case.
8. The important issue was the consent of the alleged victim. In the light of the above, the prosecution fails to discharge their burden of proof as to the absence of the PW1's consent, beyond a reasonable doubt. Therefore the assessors were quite correct in opining that the accused were not guilty. In the light of the available evidence they had no choice.
9. This court having observed the witnesses and also having reviewed the evidence of this case has no option but to come to the same conclusion and to concur with the unanimous opinion of the assessors.

10. I acquit all 6 accused of the alleged 6 counts of Rape.

11. This is the Judgment of the Court.



Chamath S. Morais
JUDGE

Solicitors for the State : ***Office of the Director of Public Prosecutions, Lautoka***
Solicitors for the Accused : ***1st Accused appeared in Person.***
2nd to 6th; Zodiac Law, Barristers and Solicitors, Ba.