

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 104 OF 2020

STATE

v

SUKULU TIKOITOGA

Counsel: Ms. K. S. Semisi for State
Accused in Person

Date of Summing Up : 24 July 2020

Date of Judgment : 27 July 2020

JUDGMENT

1. The accused was charged on the following information and tried before three assessors.

COUNT 1

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, had carnal knowledge of DT without her consent.

COUNT 2

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the vagina of DT with his fingers without her consent.

COUNT 3

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the vagina of DT with his fist, without her consent.

COUNT 4

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the anus of DT with the handle of a hammer, without her consent.

COUNT 5

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the mouth of DT with his penis without her consent.

COUNT 6

Statement of offence

ASSAULT CAUSING ACTUAL BODILY HARM : Contrary to section 207 (1) and (2)(b) of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, assaulted DT by throwing a hammer at her, cutting her hair, punching her ear and standing on her head, causing her actual bodily harm.

COUNT 7

Statement of offence

ASSAULT CAUSING ACTUAL BODILY HARM : Contrary to section 207 (1) and (2)(b) of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga on the 13th day of March, 2020 at Nasinu in the Central Division, assaulted by hitting her with a hammer, causing her actual bodily harm.

COUNT 8

Statement of offence

WRONGFUL CONFINEMENT: Contrary to section 286 of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga between the 10th day of March, 2020 and 13th day of March 2020 at Nasinu in the Central Division, wrongfully confined DT.

2. The accused waived his right to be represented by a legal practitioner either from the private Bar or from the Legal Aid Commission. He was adamant and confident that he is capable of defending himself at the trial.
3. Before the trial, the accused pleaded guilty to count 6. He confirmed that he understood the charge and that he pleaded guilty on his own free will. At the trial, the accused gave evidence and admitted under oath that on 10 March 2020 he punched the complainant in her face and cut her hair. Although the accused denied having stomped her head, I am satisfied that the elements of the offence of Assault Causing Actual Bodily Harm have

been satisfied that the guilty plea was informed and unequivocal, and that the evidence led in trial satisfied all the elements of the offence, I find the accused guilty on count 6 and convict the accused accordingly.

4. The trial proceeded against other counts in the information. At the end of the case for Prosecution, I found no evidence on count 7 to put the accused to his defence. So, I found the accused not guilty on count 7 and acquitted him accordingly.
5. In view of the medical evidence of the doctor, I directed the assessors in my Summing-Up to consider if the offence of Attempt to Commit Rape was made out in the event they were not sure if a penetration had taken place in respect of count 4.
6. Having been directed by my Summing-Up, the assessors found the accused guilty on counts 1, 2, 3, and 5 of Rape unanimously. The assessors unanimously found the accused not guilty on count 8. On count 4, the assessors, in their majority opinion, found the accused guilty on Rape. One assessor found the accused not guilty of rape and found him guilty on Attempt to Commit Rape.
7. I now proceed to review the evidence led in trial on my own Summing-Up and express my judgment as follows.
8. The Prosecution substantially relies on the evidence of the complainant and four other witnesses were called to support the version of the Prosecution. The accused, who was unrepresented, was explained his right to cross-examine and how he could impeach the credibility of the complainant and other witnesses, if he wished to do so. He exercised his right.
9. The complainant, a divorcee aged 26, was in a short romantic relationship with the accused at the time of the offence. On 9 March 2020, the complainant had left the house in Sakoca for her aunty's house in Caubati. She had left without informing the accused when the accused failed to return home until late night. She said she was alone and was scared to be in the house in the bush without lights. On the following morning, the accused, after being informed of complainant's whereabouts, visited her aunty's house and brought her back to Sakoca. The accused was angry and suspicious that the complainant had left the house to sleep with another man. The alleged rape incidents on 10 March 2020 took place in this context.
10. The complainant described in her evidence how she was raped in various forms and assaulted. The accused cross-examined the complainant albeit not to the standards of an able defence counsel.
11. Having heard evidence adduced from both sides, the assessors accepted the version of the complainant which in my view is supported on the evidence led in trial.

12. The Prosecution relies on the evidence of subsequent conduct of the complainant which the prosecution says is consistent with that of a rape victim. The alleged rape incidents had occurred on the 10 March 2020. The complainant had complained to her neighbour, Eseta, two days after the alleged incident, on 13th March. At the incident, the complainant had received visible injuries and an ugly hair-cut. The complainant said that the accused was scared that she would leave the house and report the matter to police. Although the door of the house was not properly locked, the accused ensured that the complainant did not leave the house. When she went to sleep, he would come and sleep beside her. She had to follow his instructions. The day she escaped (13 March 2020), the accused was fast asleep. Still she took a solar light with her to be charged at Eseta's house so that she could use it as an excuse in the event she got caught. The escape to Eseta's house that evening was the first available opportunity the complainant had gotten to complain of what had happened.
13. Eseta confirmed that she had received a complaint on 13 March 2020 from the complainant that she was anally raped with a hammer. Eseta observed the complainant had a black mark on her face and her hair cut really short. Eseta asked, what happened? The Complainant started crying and said she wanted to go to her place in Caubati. The complainant also said that she was scared of Sukulu. She said that Sukulu took a hammer and inserted it into her anus. Eseta is an independent and truthful witness. Mosese, the complainant's brother further confirmed the distressed condition of the complainant which he observed upon her arrival at the Yacht Club. The recent complaint and the distress evidence are consistent with the evidence of the complainant that she was raped.
14. The medical evidence of Dr. Kapoor is also consistent with complainant's evidence. The doctor had examined the complainant on 14 March 2020. Doctor's professional opinion was based on the history provided by the patient and on his own examination. The fresh injuries, less than 3 days old, on the vagina and the anus are consistent with vaginal penetration and attempted anal penetration. He agreed that the laceration or tear/cut on the posterior vagina is consistent with a finger penetration and also with a penetration of vagina by a fist of a human.
15. The accused admits that he had punched the complainant in her face and that he had cut her hair. He denies all the allegations of sexual nature and stomping her head. He cross-examined the complainant and told the court that the complainant is lying. His position is that the complainant made up these allegations because he had punched her and cut her hair.
16. The complainant does not deny that she had visited the accused in court thrice with his sister on his request and that she had lodged a withdrawal letter with the ODPP. The complainant explained how she was persuaded to visit the accused in court and write that letter to the ODPP. He had threatened to commit suicide in the remand centre if she did not accede to his demands. In the circumstances, the complainant's subsequent conduct does not suggest that she was lying in court or that she had a motive to make up a false allegation. The assessors rejected the version of the Defence which would have appeared to them to be self-serving.
17. According to the doctor's evidence, there was evidence of attempted forceful penetration of the anus by an object too big to penetrate through. He had noted only superficial tears at the anus. Although the complainant said that the handle of a hammer was inserted into her anus,

the doctor was not sure if a penetration had actually occurred. Based on his findings the doctor talked about an attempted forceful penetration. In view of the medical evidence, there is a reasonable doubt if the anus of the complainant was penetrated at least slightly with the handle of a hammer. Therefore I accept the minority opinion of the assessors and find the accused not guilty of Rape on count 4. There is sufficient evidence however that the accused had made a real attempt, not mere preparation, aimed at inserting a handle of a hammer into the complainant's anus. Therefore, I find the accused guilty of Attempt to Commit Rape.

18. Although the house was not properly locked-up and the complainant was not physically prevented from leaving the house, she was virtually under house arrest and was not free to leave the house voluntarily. In view of the evidence which I discussed briefly at paragraph 12 above, I find that the complainant was confined in the house unlawfully and wrongfully from 10 March 2020 to 13 March 2020. The opinion of the assessors in this regard is not supported on evidence. Therefore, I reject the opinion of the assessors and find the accused guilty on count 8.
19. The Prosecution proved counts 1, 2, 3, 5 and 8 beyond reasonable doubt. I find the accused guilty on these counts and convict the accused accordingly. I find the accused guilty on count 6 on accused's own confession and convict the accused accordingly. Count 4 was not proved but elements of Attempt to Commit Rape were satisfied. The accused is convicted of Attempt to Commit Rape accordingly.
20. That, is the judgment of this Court.



A handwritten signature in black ink, appearing to read "Aruna Aluthge", written over a horizontal line.

Aruna Aluthge

Judge

At Suva

27 July 2020

Solicitors: Director of Public Prosecution for State