

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 117 OF 2019

STATE

V

SEVARO RABOSEA

Counsel : Ms. S. Tivao for State
: Ms. L. Ratidara for Defence

Date of Trial : 3, 4, 5 August 2020

Date of Summing Up : 5 August 2020

Date of Judgment : 6 August 2020

JUDGMENT

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

COUNT ONE

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (b) of the Crimes Act 2009.

Particulars of Offence

SEVARO RABOSEA on the 8th day of March 2019 at Waikete Village, Nausori in the Eastern Division unlawfully and indecently assaulted **ATECA SAULAKI** by sucking both her breasts.

COUNT TWO

Statement of Offence

RAPE: Contrary to Section 207 (1) & (2) (c) of the Crimes Act 2009.

Particulars of Offence

SEVARO RABOSEA on the 8th day of March 2019 at Waikete Village, Nausori in the Eastern Division penetrated the mouth of **ATECA SAULAKI** with his penis, without her consent.

COUNT THREE

Statement of Offence

RAPE: Contrary to Section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence

SEVARO RABOSEA on the 8th day of March 2019 at Waikete Village, Nausori in the Eastern Division had carnal knowledge with **ATECA SAULAKI**, without her consent.

2. The assessors unanimously found the accused guilty on each count. I review evidence led in trial on my own Summing-Up and pronounce my judgment as follows.
3. The Prosecution called four witnesses, and its case is substantially based on the evidence of the complainant. The Defence called the accused and two other witnesses. The case for Defence is one of complete denial.
4. I carefully observed the demeanour and the mental capacity of the complainant. She demonstrated all the characteristics of a mentally impaired person. The accused concedes and there is no dispute that the complainant is a slow learner. This fact is known to the villagers in Waikete and in particular to the accused. The complainant took time to describe what had happened to her. She burst into tears and demanded breaks. Although her ability to describe

the narration of events was not as perfect as that of a normal person, she managed to tell her story in an intelligible manner.

5. The Prosecution relies on recent complaint evidence, distress evidence and medical evidence to prove complainant's consistency. The complainant had relayed the alleged sexual offending to her uncle Petero soon after the incident. Petero confirmed that he received the complaint from the complainant. The complainant was crying and in a state of distress at that time. Both Petero and Drika had seen blood stains on complainant's clothes. The subsequent conduct of the complainant is consistent with the complainant's evidence that she was raped and sexually assaulted.
6. Dr. Ongbit had examined the complainant on 9 March 2019, a day after the alleged incident. The findings of the doctor are consistent with complainant's evidence that she was raped on 8 March 2019.
7. The pig pen where the alleged incident occurred was located in an isolated place in the jungle. The complainant used to feed the pigs in that pen routinely as her uncle was disabled with an amputated leg. The accused was admittedly aware of the existence of the pig pen in that place although he denied having had any knowledge that the pigs were being fed regularly by the complainant. The proposition of the State that the accused, having known the fact that the complainant is a mentally impaired person, and of her routine movements, took the opportunity to rape the complainant in this isolated place can be accepted.
8. The Defence called the accused and two other witnesses. It took up the position that the accused was never present at the pig pen on the day of the alleged incident. The accused says that the complainant made up these allegations against him because of a land dispute.
9. The accused is an elderly man in his seventies. In his evidence, he endeavoured to portray himself to be a feeble and shabby person. However, he appeared to me to be a strong and capable man in his age.
10. The accused does not deny that he was in the Waikete village at the time of the alleged incident. His evidence is that he was visiting his brother, Tomasi, whose house was in the opposite direction. The Defence did not call Tomasi to show that the accused was visiting him

in that afternoon. The Defence does not have to prove anything in this case. However, the ultimate result is that the evidence of the complainant that the accused was present at the pig pen on that evening remained unshaken.

11. The accused said that his counsel was briefed about the alleged land dispute. However, this was not propositioned by his counsel when the complainant was in the witness box. Given the mental condition of the complainant, it is highly implausible that she is capable of fabricating these allegations.
12. The two witnesses called by the Defence testified that they did not hear or observe anything unusual when they met the complainant. They however, failed to explain how they could particularly remember this insignificant conduct of the complainant on that particular day. The version of events of the Prosecution's case is never shaken. It is open for the assessors to accept the version of the Prosecution and reject that of the Defence.
13. It was suggested by the Defence that there are six persons by the name of Sevaro in the Waikete village. The complainant said that she knew only two Sevaros, his uncle and the accused. There is no dispute that the accused is known to the complainant and that they are related to each other. She used to refer to the accused as Kamu Seva to be distinguished. There is no doubt that the complainant positively identified the accused as the culprit. To clear all doubts, I allowed the Prosecution to remove the screen and unveil the accused in court despite that she was scared to confront the culprit. The complainant positively identified the accused in court. I am sure that it is the accused sitting in the dock and nobody else that had committed these offences.
14. The complainant said that Kamu Seva put his *mimi* into her mouth and to her *mimi*. It appeared that she used the word "*mimi*" to describe the respective genital organs. When the complainant was shown the diagrams (PE1 and PE2), she cleared all the doubts and confirmed that she was referring to the genital organs (penis of the accused and the vagina of the complainant). The prosecution established that the accused penetrated the complainant's mouth and her vagina with his penis.
15. The complainant said that she did not want the accused to put his *mimi* either into her mouth or to her *mimi*. The accused did not ask and she did not want him to suck her breasts. She had

not physically resisted. She did not say in words that the accused did these acts without her consent. However, in light of the evidence led in trial that is the only inference that could have been drawn by the assessors. She said she was scared. She promptly complained to her uncle and she was crying as she complained. There is no dispute that the complainant is a mentally impaired person and that her mental capacity was known fact to the accused. The assessors were satisfied that the complainant did not have the necessary mental capacity to give consent to any of those sexual acts.

16. The accused admits that he was aware that the complainant was a slow learner. Under this circumstance, he should have been aware that the complainant was not consenting.
17. I agree with the unanimous opinion of the assessors.
18. The accused is found guilty on each count as charged and convicted accordingly.
19. That, is the judgment of this Court.



A handwritten signature in black ink, appearing to read "Arun Aluthge".

Arun Aluthge

Judge

At Suva

6 August 2020

**Solicitors: Director of Public Prosecution for State
Legal Aid Commission for Defence**