IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CRIMINAL CASE NO. HAC 24 OF 2018

BETWEEN	:	***STATE***
AND	:	***AKUILA MOMO***
Counsel	:	***Mr. J. B. Niudamu for the State***
		Accused absent and unrepresented
Hearing on	:	***09th of March 2020 – 10th of March 2020***
Summing up on	:	***13th of March 2020***
Judgment on	:	***26th of June 2020***

JUDGMENT

1. Though the accused, Akuila Momo was charged with 4 counts of Rape and 1 count of Breach of suspended sentence, at the trial the prosecution as amended the information removing 3 counts of Rape. Therefore, finally the accused was charged with one count of Rape and one count of Breach of suspended sentence only.

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

Akuila Momo, on the 19th day of January 2018, at Lautoka, in the Western Division, had carnal knowledge of Sainimere Tabua, without her consent.

COUNT 2

Statement of Offence

BREACH OF SUSPENDED SENTENCE: Contrary to section 28(1) (2) (a) and section 26 of the Sentencing and Penalties Act 2009.

Particulars of Offence

Akuila Momo, on the 19th day of January 2018, at Lautoka, in the Western Division, breached the suspended sentence of two months of imprisonment which was suspended for two years dated 13th day of March 2017 vide Lautoka Criminal Case File Number 808/16 by committing another offence namely rape.

3. The accused pleaded not guilty to the charges and the ensuing trial lasted for 3 days. The complainant Sainimere Tabua and the investigating officer WDC Babra Salele gave evidence for the prosecution while the accused was absent and unrepresented and no evidence was adduced for the defense.

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 counts of Rape and also for the count of Breach of suspended sentence.

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 clear. There are no contradictions apparent. The prosecution has led sufficient evidence covering all the elements of the alleged offence of Rape. When considered the evidence in total the ultimate question would be whether there is a reasonable doubt in the prosecution case.

8. I am much mindful that the accused bears no burden to prove his innocence. Therefore even if his presumed complete denial creates doubt, it should not be considered against him. His conduct too would not strengthen the prosecution case. The burden of proof should always be with the prosecution.

9. Therefore, I will consider whether the prosecution has managed to prove their case. When the evidence of the PW1, Seinimere Tabua is considered, it has no material inconsistencies with in itself (inconsistencies *per-se*). Further it has no material inconsistencies with the evidence of the PW2, Barbera Salele.

10. I have heard the witnesses and also observed their demeanor. I am convinced that PW1's evidence is credible and acceptable. The elements of the offences are well supported by the evidence.

11. Therefore this court has no option but to concur with the unanimous opinion of the assessors.

12. I convict Mr. Akuila Momo for the offences of Rape and Breach of Suspended Sentence.

13. This is the Judgment of the Court.

Chamath S. Morais
JUDGE

Solicitor for the Prosecution : ***Office of the Director of Public Prosecution, Suva***
Solicitor for the Accused : ***Accused absent and unrepresented***