

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 203 OF 2017

BETWEEN : **STATE**

AND : **MATEO VALU**

Counsel : *Mr. S. Babitu for the State*
Ms. P. Reddy for the Accused

Hearing on : *28th – 29th of September 2020*

Summing up on : *02nd of October 2020*

Judgment on : *09th of October 2020*

JUDGMENT

1. The accused, Mateo Valu was charged with 2 counts of Rape. He pleaded not guilty to the charges 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 2009.

Particulars of Offence

Mateo Valu, on the 16th of September 2017 at Nadi, in the Western Division, penetrated the vagina of Losana Ledua with his penis, without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

Mateo Valu, on the 23rd of September 2017 at Nadi, in the Western Division, penetrated the vagina of Losana Ledua with his penis, without her consent.

3. The ensuing trial lasted for 2 days. The complainant Losana Ledua gave evidence for the prosecution and the accused Mateo Valu gave evidence in defence.
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 the alleged two counts of Rape and found guilty by majority/unanimously of the lesser/alternative counts of Defilement.
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 for the prosecution, 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 prosecution version and the defence version is word against the word. Whereas the prosecution had the burden of proving their case beyond reasonable doubt, the accused did not have any burden at all. The act of having had sexual intercourse is admitted by the defence. The issue was only whether the said sexual intercourse was consensual or not. Though the PW1's state that she did not consent to it, it is apparent that the two were having a relationship. Her evidence is not very clear. There are many contradictions apparent. The complainant has not complained of them even after allegedly been raped twice, until a neighbor photographed them having sexual intercourse and told that to her brothers and parents. Therefore the prosecution case would be weak on the credibility and the acceptability of the complainant's evidence.
8. It is obvious the assessors disbelieved the PW1, unanimously. They have opined that the accused is not guilty of the alleged two counts of rape. As the birth certificate of the PW1 establish that she was a few days short of 16 years of age and the sexual intercourse is admitted, in absence of any evidence to suggest that the accused was misled by her appearance as to the age, the assessors have no option but to find the accused guilty of the two alternative/lessor counts of defilement.
9. Therefore, I have no reason to deviate with the opinion of the assessors. I concur with their opinion and acquit the accused of the alleged two counts of rape and convict him of the two alternative/lesser counts of Defilement.
10. This is the Judgment of the Court.



Chamath S. Morais
JUDGE

Solicitors for the State :
Solicitors for the Accused :

Office of the Director of Public Prosecutions, Lautoka
Legal Aid Commission, Lautoka