

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 089 of 2019

STATE

vs.

VIJAY KUMAR

Counsel: Ms. K. Semisi for the State
Ms. N. Mishra with Ms. M. Singh for Accused

Date of Hearing: 15th to 16th March 2021

Date of Closing Submission: 18th March 2021

Date of Judgment: 22nd March 2021

JUDGMENT

- I. The Accused is charged with one count of Disabling in Order to Commit An Offence, contrary to Section 253 (a) of the Crimes Act. The particulars of the offences are that:

COUNT 1

Statement of Offence

DISABLING IN ORDER TO COMMIT AN OFFENCE: *Contrary to Section 253 (a) of the Crimes Act 2009.*

Particulars of Offence

VIJAY KUMAR on the 15th day of June 2014 at Suva in the Central Division suffocated ILISAPECI MARAMA in water with intent to assault her, rendering her incapable of resistance.

2. The hearing commenced on the 15th of March 2021 and concluded on the 16th of March 2021. The Prosecution presented the evidence of four witnesses while the accused decided to exercise his right to remain silent.
3. The learned Counsel for the Prosecution and the Defence then made their respective written and oral submissions. Having carefully considered the evidence presented in the hearing and the respective written and oral submissions of the parties, I now proceed to pronounce the judgment of this matter.

The Burden of Proof and Standard of Proof/Right to Remain Silence

4. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until the Court finds him guilty of the offence. The burden of proof of the charge against the accused is on the Prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words, there is no burden on the accused to prove his innocence, as his innocence is presumed by law.
5. The standard of proof in a criminal trial is "proof beyond a reasonable doubt." It means that the Court must be satisfied that the accused guilty of the offence.
6. The accused opted not to give evidence and exercised his right to remain silent. The accused does not have to provide evidence. It should not be assumed that the accused is guilty because he has not given evidence. The fact that he has not given evidence proves nothing. It does nothing to establish his guilt.

Evidence of the Prosecution

7. The Prosecution alleges that the accused had forcefully put the head of the Complainant to the water, making her suffocate, with intent to commit or facilitate to commit a further offence.
8. The first witness of the Prosecution is the Interviewing Officer of the caution interview of the accused. He explained the way and the manner the caution interview was recorded. The second witness is the Witnessing Officer, who, in his evidence, explained what he had witnessed during the recording of the caution interview. The third witness of the Prosecution is Ms. Ani Vive. She had seen the accused was committing this crime. She, in her evidence, explained what she had seen on that day. The last witness of the Prosecution is Doctor Bali. He had conducted the Medical Examination of the Complainant. Doctor Bali explained what he had observed and found during the medical examination of the Complainant.
9. The Prosecution presented in evidence the record of the caution interview of the accused. The Prosecution contends that the accused admitted to committing this crime, and those admissions in the caution interview are true. Meanwhile, the learned Counsel of the accused cross-examined the Interviewing Officer and the Witnessing Officer, asking them whether the answers to the questions 27 and 31 of the caution interviews are actually fabricated as they do not reflect the real answers given by the accused.
10. In order to determine whether the Court could safely rely upon the admissions made by the accused in the caution interview, the Court must decide two issues.
11. Firstly, did the accused, in fact, make the admissions? Having considered the evidence, if the Court is not satisfied or not sure that the accused has actually made the confessions in his caution interviews, the Court must disregard the admission made in the caution interview.

12. Secondly, if the Court is satisfied that the accused has made the admission in his caution interview, then it needs to decide whether the contents of the caution interview are truthful and what weight should be given to them as evidence. It is for the Court to decide whether to consider the whole of the caution interview or part of it or none of it as truthful and credible. To do that, the Court must consider all other evidence adduced during the hearing and decide the truthfulness and the reliability of the confessions.

13. According to the record of the caution interview, the accused had answered question 27, saying that:

“She fell down on the sand and I was trying to put her down again by lie on top of her back to press her down when she suddenly bit my left finger.”

14. However, during the cross-examination, the learned Counsel for the Defence asked the Interviewing Officer whether the accused actually said he was trying to pull her up when she bit his finger. For that, the Interviewing Officer affirmatively answered, stating that it is correct. The Interviewing Officer further affirmed that the accused never said that he was trying to put her down again by laying on top of her back to press her down.

15. The caution interview states that the accused had answered the question 31, saying that:

“I pulled her up to the sand when I found out that my hand was injured but she still wants to retaliate.”

16. The Interviewing Officer, during the cross-examination, said that the accused only told him that he had pulled the Complainant to the sand when he found out his hand was injured. However, the Interviewing Officer contradicts himself later by saying that the accused further said that the Complainant still wanted to retaliate.


17. Moreover, during the evidence in chief, the Interviewing Officer said the accused answered the question in the English language. However, during the cross-examination, he said the

accused answered in the i-taukei language, which he wrote it down in English. During the re-examination, contradicting himself further, the Interviewing Officer said the answers recorded in the caution interview for questions 27 and 31 were the correct answers given by the accused. The Interviewing Officer did not provide any explanation for the above contradictions.

18. The above-discussed contradictions go to the very root of this dispute, thus creating doubt whether the accused made an admission of committing this alleged crime or not.
19. The Interviewing Officer said the accused was given an opportunity to read the caution interview record before it was concluded and signed. However, there is no record in the caution interview to that effect. Though he claimed that he was present during the recording of the interview, the Witnessing Officer had forgotten to sign the caution interview. The Witnessing Officer could not recall the reasons for his forgetfulness.
20. Ms. Vive, in her evidence, explained that she saw from the house she was standing that the accused went back to the dry land and then came down and jumped on the Complainant, who was lying on the sand. She had seen him lying on top of the Complainant.
21. According to the caution interview, the accused had answered question 27, saying that he had lied on top of her back. He had not stated that he jumped on her and lied on top of her. However, Ms. Vive, in her evidence, had provided a different version to the alleged confession made by the accused.
22. In view of these reasons, there is a reasonable doubt whether the accused had actually made the alleged confession in the caution interview.
23. The incident explained by Ms. Vive in her evidence is somewhat different from the Prosecution's allegation in the information. She had only seen the accused had jumped on top of the Complainant and laid on her.

24. Having taken into consideration the reasons discussed above, it is my considered view that the Prosecution has failed to prove the guilt of the accused beyond reasonable doubt successfully. Therefore, I find the accused not guilty of this offence as charged and acquit him from the same accordingly.
25. Thirty (30) days to appeal to the Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

22nd March 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.