

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 184 of 2020

STATE

vs.

TR

Counsel: Ms. K. Semisi for the State
Mr. J. Rabuku with Mr. L. Cati for Accused

Date of Hearing: 18th, 19th and 20th January 2021

Date of Closing Submission: 20th January 2021

Date of Summing Up: 21st January 2021

Date of Judgment: 22nd January 2021

JUDGMENT

1. The name of the Complainant and the Accused are suppressed. Hereinafter the Complainant will be referred to as **KJ** and the Accused will be referred to as **TR**.
2. The accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are that:

COUNT 1

Statement of Offence

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

Particulars of Offence

*TR between the 1st day of January 2018 and the 31st day of December 2018 at Lami in the Central Division had carnal knowledge of **KJ**, 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

*TR between the 1st day of January 2018 and the 31st day of December 2018, at Lami in the Central Division penetrated the vulva and vagina of **KJ**, with his tongue, without her consent.*

COUNT 3

Statement of Offence

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

Particulars of Offence

*TR between the 1st day of January 2018 and the 31st day of December 2018 at Lami in the Central Division unlawfully and indecently assaulted **KR**, by sucking her breasts and kissing her mouth.*

3. The hearing commenced on the 18th of January 2021 and concluded on the 20th of January 2021. The Prosecution presented the evidence of two witnesses, including the Complainant. The Defence adduced the evidence of the accused and one witness. The learned Counsel for the Prosecution and the Defence then made their respective closing addresses. Subsequently, I delivered the summing up.
4. In their opinion, two assessors found the accused guilty of all three counts, and one assessor found the accused not guilty of all three counts.
5. Having considered the evidence presented by the parties, the respective closing addresses of the parties, the summing up and the opinion of the three assessors, I now pronounce the judgment as follows.
6. The Prosecution alleged that the accused had dragged and forcefully lifted the Complainant to his house when she came out from Vilma's canteen. He then forcefully tied up her mouth with a piece of cloth. After that, the accused had licked her vagina and then sucked her breast. He then penetrated the vagina of the Complainant with his penis. The accused denies the allegation, claiming that he never committed this crime.
7. In his evidence, the accused mainly focused on the dispute he had with Kaerua and his wife. He claimed that he first heard about this allegation from a Police Officer, a neighbour of Kaerua. During the cross-examination, the accused said that his family and the Complainant's family were in the good terms before this allegation. The Complainant and her family were not involved in that dispute. Therefore, the Complainant had no reasons to make up this allegation.
8. Accordingly, apart from a mere denial of committing this crime, the accused said that there is no reason for the Complainant to make up this allegation due to the dispute his family had with the family of Kaerua.

9. The witness of the accused, Vilma Low, in her evidence, confirmed that one of the mornings, the Complainant came to her canteen to purchase certain items, but those items were not available at the canteen.
10. I found some contradictions and inconsistencies in the evidence of the Complainant. She initially said that she had never been to the accused's home and had never spoken to the accused. However, as she continued in her evidence, she said that she had visited the accused's house on a few occasions with her parents. The Complainant's mother said that the complainant usually accompanied her siblings when she visits the accused's house. Moreover, she said the accused dragged her to his home, but later explained that he carried her to the house from the drain.
11. I do not find the inconsistent nature of her evidence regarding her visits to the accused's house and her communication with the accused as fundamental inconsistencies affecting the reliability and credibility of her evidence. The Complainant is consistent and coherent with her evidence regarding the crux of this allegation, that is the sexual attacked by the accused. It was her first such a traumatic experience, and she was frightened and scared. Hence, she might not have observed or remembered all the minute details of this ordeal. Therefore, I do not find these inconsistencies and contradictions have affected the reliability and credibility of the Complainant's evidence.
12. The Complainant had screamed, but her voice had not come out as her mouth was covered. The Complainant said that she was frightened and scared when this ordeal unfolded at the accused's house. Hence, I do not find that her failure to shout for help, during those tiny moments when the accused loosen his hand covering her mouth, has dented the credibility of her evidence. The Complainant explained that she failed to remove the cloth from her mouth when the accused penetrated her vagina with his penis because it was tightly tied up. Moreover, she explained that she struggled to push him away with her legs and hands at that time.

13. The accused had threatened the Complainant, saying that he will hurt her if she tells anyone else about this incident. Moreover, she was afraid that her parent would blame her if she tells them about this incident. I accept her explanation as to the reason for the delay in reporting this incident. Hence, the delay in reporting this incident has not affected the credibility and reliability of the Complainant's evidence.
14. Taking into consideration the reasons discussed above, I find the evidence of the Complainant is reliable, credible and truthful. I accordingly accept her evidence. Hence, I have no cogent reason to disagree with the majority opinion of the assessors. Accordingly, I find the Prosecution has proven the accused guilty of these three counts as charged beyond a reasonable doubt.
15. In conclusion, I find the accused guilty of one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and convict to the same accordingly



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

At Suva

22nd January 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of Law Solutions for the Accused.