

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 276 of 2019

STATE

V

PECELI NACEBE

Counsel : Ms. Moira Konrote for the State
Ms. Lice Manulevu with Ms. Kathryn Gupta for the Accused

Dates of Trial : 1-3 February 2021

Summing Up : 4 February 2021

Judgment : 5 February 2021

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "TD".

JUDGMENT

[1] According to the Information filed by the Director of Public Prosecution (DPP), the accused, Peceli Nacebe, was charged with the following offence:

[COUNT]

Statement of Offence

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

Particulars of Offence

PECELI NACEBE, on the 26th day of June 2019, at Koro Island, in the Eastern Division, penetrated the vagina of **TD**, with his penis, without her consent.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the Assessors found the accused not guilty of the charge of Rape.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the unanimous opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] The Assessors were directed that in order for the prosecution to prove the charge of Rape, they must establish beyond any reasonable doubt that;
- (i) the accused;
 - (ii) on the specified day (in this case the 26 June 2019);
 - (iii) at Koro Island, in the Eastern Division;
 - (iv) penetrated the vagina of the complainant TD, with his penis;
 - (v) without the consent of the complainant; and
 - (vi) the accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.
- [7] Each of the above individual elements were further elaborated upon in my summing up in respect of the charge.
- [8] In support of their case, the prosecution called the complainant, TD, who was the sole prosecution witness. The accused testified on his own behalf.
- [9] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Admitted Facts*":
1. The complainant (PW1) in this matter is TD, 15 years old, student, resides at Kade Village, Koro Island.
 2. Peceli Nacebe is 49 years old, farmer, at the time of the offence resided at Kade Village, Koro Island.
 3. Peceli Nacebe and the complainant are known to each other.
 4. On 17th July 2019, the accused was interviewed under caution by PC 3752 Ilaitia Drauna at Koro Community Post.
 5. On 22nd July 2019, the accused was charged by PC 4242 Isireli Pareti at Koro Community Post.

- [10] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" without placing necessary evidence to prove them, they must therefore, treat the above facts as proved beyond reasonable doubt.
- [11] I have summarized the evidence of the complainant and the accused during the course of my summing up.
- [12] The complainant was 15 years and 10 months old at the time of the alleged incident, and was 17 years old when she testified in Court (Her date of birth being 10 August 2003). She said that in the year 2019, she was residing at Kade Village, Koro Island and was schooling at Nasau Secondary School and was in Form 4.
- [13] The complainant testified that the accused is her grandfather. She said her maternal grandfather is a cousin of the accused. She refers to the accused as Tukai Peceli and has known him since childhood. The accused was residing a few houses away from her house.
- [14] The witness first testified to the incident which took place on 25 June 2019. She said around 6.00 in the evening that day she had gone to the accused's house to borrow his phone, to call her grandmother in Suva.
- [15] The complainant said that the accused had asked her if she had a relationship with boys. She had said yes. When the accused had asked for the name of the boy she had said Bale. The accused had then said that he is better than Bale and had asked her if she could sleep with him that night. The complainant had said no.
- [16] Thereafter, the accused had gone to the shop to buy some food. The witness said that the accused had locked her inside the house at the time. Later she explained that he had locked the front door from outside. She had then opened the back door and run outside. She had then returned home and gone to sleep.
- [17] The complainant next testified to the incident which allegedly took place on 26 June 2019. She said that around 7.00 p.m. that day she had again gone to the accused's house to borrow his phone as her father was still sick.
- [18] The witness testified that the accused had given her the phone. She had then gone to the farm road to go and make the call, because there was no connection inside the house. She had crossed over to the road and then gone up a hill to reach the farm road. The witness said the farm road was about 300 metres away from their houses.
- [19] The complainant then testified as to how the accused had come from behind, grabbed her t-shirt and told her that he wants to have sex with her. The accused had then put her on the ground, stuffed her mouth with his t-shirt, tied her hands and legs with a string, removed her trousers and panty, pulled her legs up, and inserted his penis into her vagina without her consent.

- [20] In this case, the accused testified on his own behalf. He totally denies all the allegations made against him. He denied that the complainant ever came to his house in the evening of 25 June 2019 to borrow his phone.
- [21] The accused also denied all the allegations made against him by the complainant relating to the events which took place on 26 June 2019. He denied that he stuffed the complainant's mouth with his t-shirt or that he tied her hands and legs with a string or that he inserted his penis into her vagina without her consent.
- [22] At the conclusion of the evidence and after the directions given in my summing up, the three Assessors by their unanimous opinions have found the accused not guilty of the charge of Rape.
- [23] In my view, the Assessors' opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinions of the Assessors.
- [24] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt.
- [25] In the circumstances, I find the accused not guilty of the charge of Rape and accordingly acquit him of the charge.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 5th Day of February 2021

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Office of the Legal Aid Commission, Suva.