

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 167 OF 2020

BETWEEN : STATE

AND : LAISENIA NAKAUVADRA RADIO

Counsel : Ms U Tamanikaiyaroi for the State
Mr K Chang for the Accused

Date of Hearing : 27 June 2022

Date of Judgment : 27 June 2022

JUDGMENT

- [1] The accused was charged with two counts of marital rape against his spouse. Both charges are based on the same transaction. It was alleged that on 27 May 2020 the accused sexually penetrated the anus and mouth of the complainant, without her consent.
- [2] The accused pleaded not guilty to the charges. While awaiting trial he was subject to a DVRO with no contact and non-molestation conditions.
- [3] When the trial commenced the accused admitted the element of sexual penetration as alleged but contended that it was consensual. The prosecution led evidence from the complainant who unequivocally said that she engaged in consensual anal and oral sex with the accused on 27 May 2020. Under cross examination, the complainant maintained her evidence that she willingly engaged in anal and oral sex with the accused. The prosecution tendered no further evidence and closed its case.

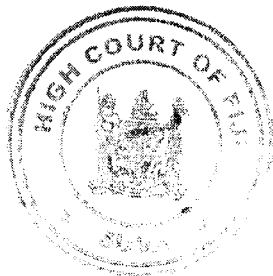
[4] Section 231 (1) of the Criminal Procedure Act states:

When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence.

[5] The phrase "no evidence" in section 231 (1) of the Criminal Procedure Act has been interpreted to mean that there is no evidence on an essential element of the charged offence (*Sisa Kalisoqo v State* Criminal Appeal No. 52 of 1984). The credibility, reliability and weight of evidence are not to be considered at this stage of the trial.

[6] In the present case, both parties concede that there is no evidence of the essential element of lack of consent for the offence of rape. In light of this concession based on the complainant's testimony I am satisfied that there is no evidence that the accused committed the alleged offences.

[7] Accordingly, I record a finding of not guilty and acquit the accused of both charges of rape. He is dispensed with his bail and no contact DVRO conditions. However, he remains subject to a DVRO with non-molestation conditions until the Family Court varies the order.



A handwritten signature in black ink, appearing to read "D. Goundar", is written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused