

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 52 of 2019

STATE

V

ANASA RAUQE

Counsel : Mr. Joeli Nasa for the State
Ms. Vinaina Diroiroi for the Accused

Dates of Trial : 21-22 June 2022

Closing Submissions : 5 July 2022

Judgment : 19 July 2022

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

JUDGMENT

[1] As per the Amended Information filed by the Director of Public Prosecutions (DPP), the accused, Anasa Rauqe, is charged with the following offence:

ONE COUNT

Statement of Offence

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

Particulars of Offence

ANASA RAUQE, on the 4th day of March 2019, at Nadi, in the Western Division, had carnal knowledge of **AK alias MM**, without her consent.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 2 days. Thereafter, the Learned Counsel for the State and Defence made their closing submissions.

The Burden of Proof and the Standard of Proof

- [3] Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

(1) *The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*

(2) *The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*

(3) *In this Decree (Act)—*

"legal burden", in relation to a matter, means the burden of proving the existence of the matter.

- [4] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

Legal Provisions and the Elements of the Offences

- [5] As could be observed the accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act.

- [6] Section 207(1) of the Crimes Act reads as follows:

207. — (1) Any person who rapes another person commits an indictable offence.

- [7] Section 207(2) of the Crimes Act is reproduced below:

(2) A person rapes another person if —

(a) the person has carnal knowledge with or of the other person without the other person's consent; or

(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or

(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.

- [8] Section 207 (2) (a) makes reference to carnal knowledge, which is an archaic or legal euphemism (synonym) for sexual intercourse. In layman's terms, having carnal knowledge with or of the other person, as stated in Section 207 (2)(a), means having penile-vaginal sexual intercourse with that other person or having sexual intercourse whereby the man penetrates his penis into the vagina of the woman.
- [9] In terms of Section 206 (5) the term carnal knowledge is said to include sodomy or anal sexual intercourse as well.
- [10] Therefore, in order to prove the count of Rape, the prosecution must establish beyond reasonable doubt that;
- (i) The accused;
 - (ii) On the specified day (in this case the 4 March 2019);
 - (iii) At Nadi, in the Western Division;
 - (iv) Had carnal knowledge with the complainant AK alias MM;
 - (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.
- [11] To further elaborate upon these elements in respect of the count of Rape. The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the offence.
- [12] The second element relates to the specific date on which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond reasonable doubt.
- [13] The fourth element involves the penetration of the complainant's vagina, with the accused's penis. It must be noted that, in law, the slightest penetration is sufficient to satisfy this element of penetration. This element is complete on penetration to any extent and it is not necessary to have evidence of full penetration or ejaculation. Therefore, to establish this element, the prosecution should prove beyond reasonable

doubt that the accused penetrated the vagina of the complainant with his penis to any extent.

- [14] The fifth and sixth elements are based on the issue of consent. To prove the fifth element, the prosecution should prove that the accused penetrated the complainant's vagina, with his penis, without her consent.
- [15] It should be borne in mind that consent means, consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the fact that there was no physical resistance alone shall not constitute consent. A person's consent to an act is not freely and voluntarily given if it is obtained under the following circumstances:
- (a) by force; or
 - (b) by threat or intimidation; or
 - (c) by fear of bodily harm; or
 - (d) by exercise of authority; or
 - (e) by false and fraudulent representations about the nature or purpose of the act; or
 - (f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.
- [16] Apart from proving that the complainant did not consent for the accused to penetrate her vagina with his penis, the prosecution must also prove that, either the accused knew or believed that complainant was not consenting or that he was reckless as to whether or not she consented. The accused was reckless, if the accused realised there was a risk that she was not consenting, but carried on anyway when the circumstances known to him it was unreasonable to do so. Simply put, whether the accused did not care whether the complainant was consenting or not. Determination of this issue is dependent upon who Court believes, whilst bearing in mind that it is the prosecution who must prove it beyond any reasonable doubt.
- [17] A woman of over the age of 13 years is considered by law as a person with necessary mental capacity to give consent. The complainant in this case was 18 years of age at

the time of the alleged incident, and therefore, she had the mental capacity to consent.

The Admitted Facts

[18] Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), deals with “Admission of facts”. The Section is reproduced below:

135. — (1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—

(a) by the prosecutor; and

(b) by the judge or magistrate.

(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.

[19] Accordingly, the prosecution and the defence have consented to treat the following facts as “Admitted Facts”:

1. THAT Anasa Rauqe (hereinafter referred to as the “accused”), was 37 years of age, a driver and was residing at A.H. Khan Road, Nawaka, in Nadi, at the material time.
2. THAT the accused drives a yellow gas vehicle registration number JY671.
3. THAT the accused is usually based at the carrier stand which is opposite the bus stand in Nadi Town.

[20] Since the prosecution and the defence have consented to treat the above facts as “Admitted Facts” without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

Case for the Prosecution

[21] The prosecution, in support of their case, called the complainant, AK alias MM, and one Jale Katia, in support of their case.

[22] Evidence of the complainant AK alias MM

- (i) The complainant's evidence was recorded in a 'closed court'.*
- (ii) The complainant testified that she is currently residing in Namosi Village, in Namosi and is doing domestic duties (she is unemployed).*
- (iii) She said that her full name is AK. She is also known by the name MM, which is her Catholic name.*
- (iv) She is now 21 years of age. Her date of birth is 10 December 2000.*
- (v) The witness testified that in early 2019 she was residing at Waiyavi Stage 2 in Lautoka, and attending Fiji National University (FNU). At Waiyavi she was staying with her uncle Samisoni Tuilawaki and her aunt (whose name she could not recall) and their two children – namely Meli Paula and Talica Teresia. Her uncle Samisoni was her mother's oldest brother.*
- (vi) At FNU she was studying Early Childhood Education at the Natabua Campus.*
- (vii) The witness testified that she had been staying in Waiyavi with her uncle for about 2 months – in February and March 2019.*
- (viii) The complainant testified that on 1 March 2019, she came back home from school around 3.00 in the afternoon. Thereafter, she went to visit her aunty Paulina Tuba, in Sigatoka. She had travelled by minibus. She could not recall what time she reached Sigatoka. She had spent 3 days at her aunty's home in Sigatoka.*
- (ix) On Monday 4 March 2019, she had left her aunty's place in Sigatoka by minibus and got off at the Nadi bus stand. When asked what time she got off at the Nadi bus stand, the witness said it may have been around 8.00 in the night.*
- (x) The complainant said that after getting off, she had looked for one vehicle driver by the name of Oscar. She said that her uncle usually hires Oscar whenever they have to travel from Nadi to Lautoka. He is a private vehicle driver. She had been looking for Oscar to take her back to Lautoka.*
- (xi) The witness said that she came and was standing at the taxi stand in Nadi. The taxi stand was about 10 to 12 metres from the Nadi bus stand. One of the vehicle drivers – an iTaukei man – was also standing at the taxi stand. There were 3 other vehicles that were parked there at the time.*
- (xii) Thereafter, the witness asked the iTaukei man whether he knew where Oscar was residing. The man had said that he will take her to where Oscar was staying.*
- (xiii) The complainant said that at the time there was lighting in the area that was emanating from the market and from the Courts Retail shop. She said that with the said lighting she could clearly see the face of the iTaukei man she was talking to.*
- (xiv) When asked to describe the iTaukei man, she said: "He is tall but not that tall, he is fat but not that fat and he is dark". The man had been wearing ¾ shorts*

and a t-shirt at the time. She had been wearing a top and long pants at the time.

(xv) Thereafter, the complainant had left with the iTaukei man in his vehicle. She described the vehicle as a yellow gas car. It is an admitted fact that the accused drives a yellow gas vehicle bearing registration number JY 671. While the driver was driving the vehicle, she was sitting on the rear passenger seat (behind the front passenger seat).

(xvi) They had proceeded along the Nadi back road. They were coming on the tar sealed road and then after a while the driver had turned the vehicle to a gravel road where the tramline is (the train line).

(xvii) The following questions were then asked from the witness and she answered as follows:

Q. What happened next?

A. When we were on our way, it was sort of an empty place. We were only able to pass 3 houses.

Q. What was going through your mind at this time?

A. Nothing.

Q. Then what happened?

A. On our way, after we passed the 3 houses, in front it was also empty. He stopped and got off the vehicle.

Q. Who are you referring to?

A. The driver of the car who was taking me.

Q. Then what happened?

A. He told me to get off and to come to the back of the car.

Q. What did you do?

A. I got off and went around the car and then he told me take off my clothes.

Q. How did you feel at this time?

A. I was frightened.

Q. Then what happened?

A. He took off my clothes and told me to turn in front.

Q. What clothes did he take off?

A. My long pants and my panty.

Q. What else did he do?

A. He told me to turn and then he put his private part to my private part.

Q. *When you say he put his private part – what is another name for his private part?*

A. *His penis (kau).*

Q. *What is another name for your private part?*

A. *Vagina.*

Q. *When he did this, how did you feel?*

A. *There was no feelings, since I did not consent to what was done to me.*

Q. *When he was putting his penis into your vagina, can you please describe the surroundings?*

A. *It was an empty place. In front there was a light.*

Q. *And when he put his penis into your vagina, how did you respond or react to that act?*

A. *I pushed him, put on my long pants and got back to the vehicle. And then we came back.*

(xviii) After getting into the vehicle, the complainant testified: “We came – we followed the back road. Then we reached Votualevu”.

(xix) When asked why they were on their way to Votualevu, the witness said: “We came to Votualevu for me to withdraw (money). When I went back the car was not there”.

(xx) The witness testified that on the way from the place of the alleged incident to Votualevu, the iTaukei man had said that his name is Eto. That he is residing in Nawaka and that he is married.

(xxi) The witness confirmed that the yellow gas vehicle registration number JY 671, which travelled through the Nadi back road on to the gravel feeder road, where the tramline is and parked at the empty space and then continued the journey to Votualevu, was the same vehicle that she initially boarded at the carrier stand in Nadi.

(xxii) The witness said that on reaching Votualevu, she got off the vehicle and went to withdraw. When she came back the car was not there. At the time, there was another man standing there and he had asked what the problem was. She had asked him whether he saw the other vehicle that she had travelled in. She had then asked him if he can take her to the Namaka Police Station to lodge a report and he had agreed. The witness said that she went in the said man’s car to the Namaka Police Station. She had told the man that she was raped by the driver of the vehicle that had dropped her at Votualevu.

(xxiii) On coming to the Namaka Police Station to lodge a report, they had told her to go and lodge a report at the Nadi Police Station. Thereafter, she had gone in the same vehicle and lodged a report at the Nadi Police Station.

- (xxiv) *The witness confirmed that the iTaukei man that had put his penis into her vagina, is the same iTaukei man that had told her at the carrier stand that he will transport her to Oscar, and is the same iTaukei man that brought her to the scene of the alleged incident and later dropped her at Votualevu.*
- (xxv) *The complainant identified the accused in the dock as Anasa Rauqe.*
- (xxvi) *The complainant said that she did not agree for the accused to put his penis into her vagina.*
- (xxvii) *The complainant was cross examined at length by the defence. The defence also put several suggestions to the complainant in line with the defence case.*
- (xxviii) *The complainant agreed that she is mostly referred to as MM. She said that the name on her birth certificate is AK and that when enrolling at FNU in 2019 she had used her birth certificate name. The complainant also agreed that when she made her complaint to the Police, she had not given her birth certificate name but given her name as MM. The name MM is her Catholic name.*
- (xxix) *The complainant said that the Early Childhood Program that she was enrolled in was to become a Kindergarten teacher. She said she did not complete the program.*
- (xxx) *The witness said that on 4 March 2019, she did not have any pre-arranged plans to meet Oscar at the taxi/carrier stand in Nadi. She did not have any mobile phone with her so as to call him.*
- (xxxix) *It was suggested to the witness that the accused had only told her that he knows Oscar and that he did not tell that he will take her to where Oscar is staying. The witness denied this suggestion.*
- (xxxix) *It was also suggested to the witness that the accused had only told her that he is willing to take her to Lautoka but for a fare.*
- (xxxix) *It was suggested to the witness that after leaving the Nadi taxi stand and travelling on the Ratu Naevo Road, she had told the accused to stop the vehicle so that she can come and sit in the front passenger seat. It was further suggested that the accused had stopped the vehicle and that the witness had jumped into the front passenger seat and had sat there. It was also suggested that when she and the accused had been travelling on the Nadi back road, she had begun to touch the accused's knees and asked him if he could give her a free ride to Lautoka. The witness denied all these suggestions.*
- (xxxix) *The complainant agreed that she had asked the accused where the nearest BSP ATM was and that was when the accused had taken her to the BSP ATM at Votualevu.*
- (xxxix) *The complainant also agreed that at the time they had got to the BSP ATM at Votualevu, she had her wallet and her ATM Card with her. She agreed that she took her wallet and ATM Card with her at the time she went to withdraw the money. She also agreed that she was withdrawing the money to pay her car fare to Lautoka.*

*(xxxvi) When asked, why did you come back to look for the car, the witness said:
"Because I have hired him to bring me down to Lautoka".*

*(xxxvii) The following questions were then asked from the witness and she answered
as follows:*

*Q. MM on that day, at Votualevu at the BSP ATM, I put it to you that my
client was parked at the service station but you went to another vehicle?*

*A. No. The car was not there, the reason I went and boarded another vehicle
was that I needed to go and report to the Police Station.*

*Q. In your answer before to my last question, you said, you went to look for
my client's vehicle so he could bring you to Lautoka?*

A. Yes.

*Q. So now you are saying that you went to another vehicle because you
wanted to report to the Police Station?*

*A. When I came back, the vehicle was not there. Then I went to another
vehicle to go and report.*

*Q. I suggest to you that you are lying to Court about the allegations of
forceful sexual intercourse made against my client?*

A. No. He is lying. He did the action/at.

*Q. When you were giving evidence in chief yesterday, you said that my client
had taken you to the gravel road and forcefully had sexual intercourse
there?*

A. Yes. He took me to that place.

Q. Even after that you still wanted to hire his vehicle from Nadi to Lautoka?

A. Yes. That is why I still wanted to have him to bring me down to Lautoka.

*Q. In your evidence in chief yesterday, you said you were frightened when
the accused was taking your clothes off?*

A. Yes.

*Q. Even after feeling frightened, you still wanted to hire his vehicle from
Nadi to Lautoka?*

*A. Yes. Because I was travelling in that vehicle. The vehicle that he brought
me in.*

*(xxxviii) Although initially stating that she took her wallet and her ATM Card with
her when going to withdraw the money, later in the cross-examination the
witness said that she only took the ATM Card with her and that she had left
the wallet in the accused's vehicle. Later the witness said that she had*

dropped the wallet in the accused's vehicle or that the wallet had fallen inside the vehicle.

(xxxix) The complainant agreed that she had told the doctor who examined her after the incident (on the night of 4 March 2019) that she had got into a private vehicle that was supposed to take her to Lautoka for \$40.00.

(xl) It was suggested to the witness that this agreement to take her to Lautoka for \$40.00 had happened at the Nadi taxi stand. The witness denied this suggestion. She said: "After the incident, when we were on our way to Votualevu, he then told me that he will bring me down to Lautoka". When asked whether a figure had been agreed upon, the witness said: "He told me about the \$40.00".

(xli) In re-examination, the State Counsel, inter alia, asked the following questions from the witness and she answered as follows:

Q. When you got off at Votualevu, what items did you have in your possession?

A. My wallet and the card.

Q. When you got off the accused person's car at Votualevu, what did you have with you?

A. When I got off the car, only the card was in my hand but the wallet was in the vehicle.

Q. Why was the wallet in the vehicle?

A. Because I know I will come back and board the same vehicle.

Q. Why did you want to board the same vehicle to take you to Lautoka?

A. Because when we reached Votualevu, he told me to hire him down to Lautoka.

Q. Did you agree to that?

A. Yes.

Q. Why did you agree to that?

A. Because he had told me to hire him to Lautoka.

Q. When did the accused say the hire from Nadi to Lautoka was \$40.00? Was it on the way to Votualevu or in Votualevu?

A. In Votualevu.

Q. How long did the accused have sexual intercourse with you for?

A. One minute.

Q. *Is there any reason for you to lie regarding the allegation against the accused?*

A. *No. I am not lying. I am telling the truth to this Honorable Court.*

Q. *You said the accused had forcefully put his private part into your private part. Were you still comfortable to go with him from Votualevu to Lautoka?*

A. *No. I was frightened. But when he told me about the fact that I can hire him from Votualevu to Lautoka for \$40.00 that's why I wanted to board that vehicle.*

[23] Evidence of Jale Katia

- (i) *The witness testified that he is residing at Legalega in Nadi and is 33 years of age. He is working as a Supervisor at Meat Production at Turners and Growers Company. He said he has been working there for the past 5 years.*
- (ii) *The witness testified that on 4 March 2019, he was doing some jobs at Shop N Save Supermarket driving vehicle. Around 9.00 pm that day he took a young woman to the Namaka Police Station. He had picked her from the Votualevu Shop N Save. He doesn't know the name of the girl.*
- (iii) *He said that he had been parked at Shop N Save Supermarket. The girl was coming looking for transport. So he had picked her up from there. She had told him to take her to the Namaka Police Station.*
- (iv) *When asked to describe her demeanor and facial expression at the time, the witness said: "What I noticed was, that she was worried – a bit scared and had heart fright".*
- (v) *When asked whether the girl had told him why she wanted him to take her to the Namaka Police Station, the witness said: "She told me that the vehicle she boarded earlier, that the driver did something to her".*
- (vi) *The witness said that he had taken the girl to the Namaka Police Station in his probox vehicle registration number JP 577. He had dropped the girl at the Namaka Police Station and gone back.*
- (vii) *When asked what ethnicity the girl belonged to, the witness said that she was an iTaukei.*

[24] At the end of the prosecution case Court decided to call for the defence. The accused was then explained his legal rights. I explained to him that he could address Court by himself or his Counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[25] The accused exercised his right to remain silent.

Analysis

[26] The prosecution in support of their case, called the complainant, AK alias MM, and witness Jale Katia. The accused exercised his remained silent.

[27] The burden of proving each ingredient of the charge rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove the elements of the charge beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove at paragraph 10 of this judgment.

[28] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as admitted facts without placing necessary evidence to prove them. Therefore, those facts are considered as proved beyond reasonable doubt.

[29] Based on the said admitted facts it is admitted that accused, was 37 years of age, a driver and was residing at Nawaka, in Nadi, at the material time. It is also agreed that the accused drives a yellow gas vehicle registration number JY671 and that he is usually based at the carrier stand which is opposite the bus stand in Nadi Town.

[30] I have summarized the evidence of the two prosecution witnesses led during the trial. The complainant had testified as to how the accused had inserted his penis into her vagina, on the night of 4 March 2019. She has testified that she did not agree or consent to the accused inserting his penis into her vagina.

[31] The complainant's testimony is that after she boarded the accused's vehicle, the accused had proceeded along the Nadi back road. They were coming on the tar sealed road and then after a while the accused had turned the vehicle to a gravel road where the tramline is. He had then stopped the vehicle at an empty place. He had told her to get off and to come to the back of the car. She had complied. She said she got off and went around the car. Then the accused had told her to take off her clothes. She said she was frightened. The accused had then taken off her clothes-namely her long pants and her panty. He had then told her to turn in front and had inserted his penis into her vagina.

This had been for about one minute. Thereafter, she had pushed him, put on her long pants and got back to the vehicle.

- [32] The complainant has testified that when the accused had told her to take off her clothes, that she had been frightened. The accused had then taken off her clothes- her long pants and her panty. It has not been elicited in evidence by the prosecution as to what the complainant was doing at the time the accused had been taking off her clothes (whether she resisted or not) or whether the complainant's long pants and panty had been removed entirely or only partially by the accused.
- [33] Neither has it been elicited in evidence as to what the complainant meant when she said that the accused had then told her to turn in front. Was it turning front as in facing the accused? Or was it turning front as in having her back towards the accused? At the time the alleged penetration took place was the complainant and the accused facing each other or at the time the alleged penetration took place was the complainant's back towards the accused. These are important and relevant details that should have been elicited from the complainant. As it stands, it is not clear from the evidence as to the exact manner in which the accused is alleged to have penetrated the complainant's vagina with his penis.
- [34] The defence version is one of total denial. The version of the defence was that the complainant had hired the accused's vehicle to take her from Nadi to Lautoka for \$40.00 and that the said agreement had been reached at the Nadi taxi stand. The defence version was that the complainant was trying to seduce the accused to obtain a free ride to Lautoka and for this reason he was wanting the complainant to get off his vehicle.
- [35] This position of the defence, that the complainant had hired the accused's vehicle to take her from Nadi to Lautoka, is consistent with the history given by the complainant to the doctor who had examined her after the alleged incident. Although the complainant's Medical Examination Report was not formally tendered in evidence, the complainant agreed that she had told the doctor that she had got into a private vehicle that was supposed to take her to Lautoka for \$40.00.
- [36] The complainant's position is that this agreement with the accused had only been reached after the alleged incident of Rape, when the accused had brought her to Votualevu. She said: *"After the incident, when we were on our way to Votualevu, he then*

told me that he will bring me down to Lautoka". On reaching Votualevu, the accused had said that the hire from Nadi to Lautoka was \$40.00.

- [37] In any event, the complainant has admitted that she had asked the accused where the nearest BSP ATM was and that it was on her request that the accused had taken her to the BSP ATM at Votualevu. As per her evidence it is clear that she had every intention of returning to the accused's vehicle upon withdrawing money from the ATM so that the accused could take her to Lautoka.
- [38] Although initially stating that she took her wallet and her ATM Card with her when going to withdraw the money, later in cross-examination the complainant said that she only took the ATM Card with her and that she had left the wallet in the accused's vehicle. Later the complainant said that she had dropped the wallet in the accused's vehicle or that the wallet had fallen inside the vehicle.
- [39] However, in re-examination, she said that at the time she got down from the accused's vehicle at Votualevu, she had only taken the ATM card with her. She said that she had left the wallet in the vehicle. When asked why she did so she said: *"Because I know I will come back and board the same vehicle"*. This is further proof that the complainant had every intention of returning to the accused's vehicle upon withdrawing money from the ATM.
- [40] This conduct of the complainant seems quite strange. Even after being allegedly raped by the accused the fact that she wanted to continue travelling with him in his vehicle seems quite unusual. The explanation provided by the complainant in this regard is not plausible.
- [41] Upon her return after withdrawing money from the ATM she said she could not find the accused. This had prompted her to get into the vehicle of Jale Katia and to go to the Namaka Police Station to report the incident of rape against the accused. The complainant said from the Namaka Police Station she had to go back to the Nadi Police Station to make her complaint and that she travelled with the said Jale Katia. However, Jale Katia clearly testified that he had taken the complainant to the Namaka Police Station and dropped her there. He made no mention of taking the complainant from Namaka to Nadi Police Station in his vehicle.

[42] Considering all the above and having analysed the evidence led in this case in its totality, I am of the opinion that the complainant's evidence is not entirely probable and convincing. As such, her evidence cannot be regarded as credible and reliable.

[43] Therefore, it is my opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt.

[44] In the circumstances, I find the accused not guilty of the charge of Rape with which he is charged.

[45] Accordingly, I acquit the accused of the charge of Rape.




Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 19th Day of July 2022

Solicitors for the State:

Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused:

Office of the Legal Aid Commission, Lautoka.