

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 80 of 2020

BETWEEN : **THE STATE**

AND : **AMENA TAVEYAGONA**

Counsel : Ms. Lomaloma, M for the State
: Ms. Mataika, P for the Accused

Date of Trial : 15-16 August 2022

Date of Judgment: 18 August 2022

JUDGMENT

The charges

1. The Accused is charged with two counts of rape and a count of common assault. He pleaded not guilty to all three counts and the matter proceeded to trial over two days.

Burden and standard of proof

2. The Prosecution brings the charges and so carries the burden of proving each charge beyond reasonable doubt. This proof is discharged when the elements of each of the charges is proved so that the Court is sure of the Accused person's guilt.

The elements

3. To prove the charge of rape in Count 1, the Prosecution is required to prove that:
 - The Accused
 - Inserted his finger
 - into the vagina of the Complainant
 - Without her consent

4. The Prosecution needs to prove the following elements for the rape allegation in Count 2:
 - The Accused
 - Had sexual intercourse
 - With the Complainant
 - Without her consent

5. To prove common assault in Count 3, the Prosecution is required to prove that:
 - The Accused
 - Unlawfully assaulted
 - the Complainant

The Prosecution case

6. The Complainant was the Prosecution's only witness. She was born on 29 September 2003. She testified that there was a birthday party for the Accused at their home on 12 February 2019. He was her step-father. At some time during this party, she was sent to sleep and slept in her mother and step-father's room. Whilst sleeping, she felt a weight on her body and awakened to see the Accused on top of her. The light from the verandah in front of her parents' bedroom brightened the room and she saw that it was the Accused. He told her to remain quiet. He lifted her t-shirt and fondled both her breasts. She did not do anything because he told her to keep quiet. He pulled up her skirt, pushed her undergarment to one side and inserted his finger into her vagina. It was painful. He poked her vagina with his finger for 2 – 3 minutes then got up and left. Her mother was drinking grog outside on the verandah where there was loud music and dancing.

7. She did not tell anyone because the Accused had told her he would do something to her if she told her mother.


8. She said the next incident happened in May 2020. On this day, she returned from school and had a shower. The Accused came into her room while she was dressing. He pushed her onto the bed, lifted her towel and inserted his penis into her vagina. She did not do

anything as she was scared of him. He told her he would do something to her if she told anyone. She did not tell anyone because she knew the Accused had a dagger which he kept in his bag.

9. This matter came to light in October 2020 when the Accused slapped her on her cheek when she created a Facebook account. She called her mother who was in Bua at the time and told her the Accused had slapped her. She was told to report the matter to the Police. She called the Police and when they came, she told them everything that had happened to her.
10. In cross-examination, the Complainant said she had neither screamed nor shouted in the first alleged incident as nothing had happened. She admitted lying to the Police that the Accused had inserted his penis into her vagina on 12/02/19. She also said that the second alleged incident did not happen. She agreed she was not threatened and had neither yelled nor screamed because nothing happened. She said the Accused was strict with her and restricted her movements and use of mobile phone. She admitted making a false report because the Accused had slapped her for going on Facebook.
11. She admitted telling her mother about being slapped by the Accused and agreed that she did not tell her mother anything about the incidents in February and May because nothing happened on those dates.
12. She was re-examined and maintained that she had lied to the Police about the Accused putting his penis into her vagina. She said the Accused did not insert his penis into her vagina in the second incident either. She said she told the Police about the second allegation because she did not want to stay with the Accused.
13. The Accused did not give evidence and chose to remain silent. He was well within his rights to do so and no negative inference is made against him for exercising his right to remain silent. He is presumed innocent and has no duty to prove his innocence. It is for the Prosecution always to prove the charges they bring and to do so beyond reasonable doubt.

Analysis

14. I consider the charges separately. A finding on one count does not necessarily mean the same finding for the other counts.
15. Counts 1 and 2 are for rape. The Complainant's evidence in support of these charges was discredited in cross-examination. She maintained in re-examination that nothing happened in these counts. She said the Accused had not penetrated her vagina with his penis and that she had made up the allegations after the Accused slapped her for using Facebook and because she did not want to stay with the Accused.
16. Apart from the evidence of the Complainant, there is no other evidence against the Accused.
17. The inconsistencies in the evidence and the admissions of fabrication go to the root of the charges in Counts 1 and 2 against the Accused. The Prosecution has failed to prove these charges beyond reasonable doubt.
18. On Count 3 however, the Complainant was consistent that the Accused had slapped her when he found her on Facebook. She agreed that as a result of being slapped by the Accused, she made up the allegations of rape against him.
19. While her evidence on the rape charges was discredited, her account as to being assaulted was not. I find the charge of common assault proved beyond reasonable doubt. I feel sure that on 26 October 2020, the Accused had slapped the Complainant. The slap was an unlawful assault on her.
20. The verdict of the Court is that the Accused is acquitted of rape in Counts 1 and 2, and convicted of common assault in Count 3.


Siainiu F. Bull
Acting Puisne Judge

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused



