

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 315 of 2022

STATE

vs.

TALE TILOLOMANI LESINAIVALU

Counsel: Mr. J. Singh with Ms. J. Fatiaki for the State
Ms. R. Nabainivalu with Ms. G. Henao for the Accused

Date of Ruling: 24th May 2023

RULING

[On No Case To Answer]

1. The Accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offences are:

COUNT 1

Statement of Offence

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

Particulars of Offence

TALE TIKOLOMANI LESINAIVALU on 27th August 2022 at Ratu Dovi Road, in the Central Division, penetrated the vagina of **VAELA BALEICAKAU**, with his fingers, without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

TALE TIKOLOMANI LESINAIVALU on 27th August 2022 at Ratu Dovi Road, in the Central Division, had carnal knowledge of **VAELA BALEICAKAU**, without her consent.

COUNT 3

Statement of Offence

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

Particulars of Offence

TALE TIKOLOMANI LESINAIVALU on 27th August 2022 at Ratu Dovi Road, in the Central Division, inserted his penis into the anus of **VAELA BALEICAKAU**, without her consent.

2. Consequent to the plea of not guilty entered by the Accused, the matter proceeded to the hearing. The hearing commenced on the 22nd of May, 2023. The Prosecution called one witness, the Complainant and concluded the Prosecution's case. The learned Counsel for the Defence then made submissions pursuant to Section 231 (1) of the Criminal Procedure Act, stating that there is no evidence to establish that the Accused committed these three offences as charged in the Information. The Court heard the oral submissions of the learned Counsel for the Prosecution and the Defence. During the submissions, the learned Counsel for the Prosecution conceded the application made by the learned Counsel for the Defence, stating

the Prosecution did not present evidence to establish that the Accused committed these three offences, and invited the Court to act under Section 231 (1) of the Criminal Procedure Act. Having considered the evidence presented by the Prosecution and the respective oral submissions of both parties, I now pronounce my ruling as follows.

3. Section 231 (1) of the Criminal Procedure Act states that:

“When the evidence of the witnesses of 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 committed the offence.”

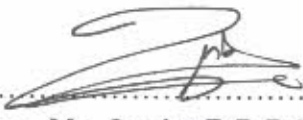
4. In pursuant to Section 231 (1) of the Criminal Procedure Act, the Court is required to satisfy whether there is some relevant and admissible evidence on each element of the offence as charged in the information and not whether the evidence is credible and acceptable.
5. The Accused admitted the following facts as admitted facts under Section 135 of the Criminal Procedure Act.
 1. *The complainant’s name is Vaela Baleicakau (hereinafter referred to as “Vaela”).*
 2. *The accused’s name is Tale Tikolomani Lesinaivalu (“Tale” also known as Tiko and hereinafter referred at as “Tiko”)*
 3. *In August 2022, Vaela was employed as a Cook in New World Supermarket.*
 4. *In August 2022, Tiko was employed as an electrician.*
 5. *Vaela and Tiko were known to each other.*

6. *On 27th August 2022, Tiko was residing at Lot 83 in Ratu Dovi Road at John's house.*
 7. *On 27th August 2022, Vaela went to Tiko's house at Lot 83 Ratu Dovi Road, Nadera.*
 8. *Whilst at Ratu Dovi Road, Tiko.*
 - a) *Penetrated Vaela's vagina with his penis as per count no. 2 in the Amended Information.*
 9. *Vaela was bleeding after she left Tiko's residence on the 27th August 2022.*
 10. *It is hereby agreed that the admissibility of the following document is not in dispute and the same will be tendered by consent.*
 - a) *Photographic booklet dated 1st September, 2022.*
6. The main elements of the offence of Rape as charged under the first count are;
- i) The Accused,
 - ii) Penetrated the vagina of the Complainant with his fingers,
 - iii) The Complainant did not consent to the Accused to penetrate her vagina with his fingers,
 - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his fingers in that manner.
7. The main elements of the offence of Rape as charged under the second count are:
- i) The Accused,

- ii) Penetrated the vagina of the Complainant with his penis,
 - iii) The Complainant did not consent to the Accused to penetrate her vagina with his penis,
 - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his penis in that manner.
8. The main elements of the offence of Rape as charged under the third count are:
- i) The Accused,
 - ii) Penetrated the anus of the Complainant with his penis,
 - iii) The Complainant did not consent to the Accused to penetrate her anus with his penis,
 - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his penis in that manner.
9. There is no dispute regarding the identity of the Accused as they are known to each other well. Moreover, the Accused admitted that he penetrated the vagina of the Complainant with his penis in respect of the second count; thus, the issue is whether she consented.
10. The Complainant testified in her evidence that she went to the Accused's house of her own volition. She then engaged in consensual sexual intercourse with the Accused, where she consented to the Accused penetrating her vagina with his penis. The Complainant did not provide any evidence regarding the first count, where the Prosecution alleges that the Accused penetrated her vagina with his fingers without her consent. Regarding the third count, the Complainant testified that the Accused penetrated her anus with his penis. Still, she provided no evidence to establish that she did not consent to the Accused penetrating her anus in that manner.
11. In view of the evidence presented by the Prosecution, there is no evidence to establish that the Accused had committed these three counts of Rape as charged in the information. Thus, I acquit the Accused of these three counts of Rape as charged in the information.

12. Thirty (30) days to appeal to the Fiji Court of Appeal.




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

At Suva

24th May 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.