

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 38 of 2021

STATE

V

ISAIA NEIQOVU

Counsel : Ms. S. Swastika and Ms. S. Prakash for the State.
: Ms. B. Mohammed for the Accused.

Dates of Hearing : 13, 15, 16 June, 2023

Closing Speeches : 19 June, 2023

Date of Judgment : 20 June, 2023

JUDGMENT

(The name of complainant is suppressed she will be referred to as "T.D")

1. The Director of Public Prosecutions charged the accused by filing the following information:

Statement of Offence

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

Particulars of Offence

ISAIA NEIQOVU on the 7th day of February, 2021 at Olosara, Sigatoka in the Western Division, had carnal knowledge of "T.D" without her consent.

2. In this trial, the prosecution called three witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer in respect of the offence of rape as charged.

BURDEN OF PROOF AND STANDARD OF PROOF

3. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.

ELEMENTS OF THE OFFENCE

4. To prove the above count the prosecution must prove the following elements of the offence of rape beyond reasonable doubt:
 - (a) The accused;
 - (b) Penetrated the vagina of the complainant with his penis;
 - (c) Without her consent;
 - (d) The accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
5. In this trial, the accused has denied committing the offence of rape. It is for the prosecution to prove beyond reasonable doubt that it was the accused who had penetrated the vagina of the complainant with his penis

without her consent and the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.

6. The first element of the offence is concerned with the identity of the person who allegedly committed this offence. This element is not in dispute.
7. The second element is the act of penetration of the complainant's vagina by the penis. This element is not in dispute.
8. The third element is that of consent, this element is in dispute. Consent means to agree freely and voluntarily and out of her free will. If consent was obtained by force, threat, intimidation or fear of bodily harm or by exercise of authority, then that consent is no consent at all. Furthermore, submission without physical resistance by the complainant to an act of another shall not alone constitute consent.
9. If this court is satisfied that the accused had penetrated the vagina of the complainant with his penis and she had not consented, then this court is required to consider the last element of the offence that is whether the accused knew or believed that the complainant was not consenting or did not care if she was not consenting at the time.
10. To answer the above this court will have to look at the conduct of both the complainant and the accused at the time and the surrounding circumstances to decide this issue.
11. If this court is satisfied beyond reasonable doubt that the prosecution has proven beyond reasonable doubt that the accused had penetrated his penis into the complainant's vagina without her consent then this court must find the accused guilty as charged.

12. If on the other hand, there is a reasonable doubt with regard to any of those elements concerning the offence of rape, then this court must find the accused not guilty.
13. The slightest of penetration of the complainant's vagina by the accused penis is sufficient to satisfy the act of penetration.
14. As a matter of law, I direct myself that offences of sexual nature as in this case do not require the evidence of the complainant to be corroborated. This means, if this court is satisfied with the evidence given by the complainant and accepts it as reliable and truthful then this court is not required to look for any other evidence to support the account given by the complainant.

ADMITTED FACTS

15. In this trial, the prosecution and the defence have agreed to certain facts titled as admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
16. I will now remind myself of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. I will summarize the important features for consideration and evaluation in coming to my final judgment in this case.

PROSECUTION CASE

17. The complainant informed the court that in the year 2021 she was employed as a Supervisor for Mobil On the Go Service Station in Suva. On 6th February, 2021 the employer had organized a get together of all the supervisors at a resort in Sigatoka.

18. At around 6pm the complainant started to drink beer first it was Fiji Gold followed by Woodstock and then vodka cruiser. The complainant was having fun meeting colleagues from other branches the drinking continued till 10 or 11 pm. The complainant whilst coming from Suva to Sigatoka had also consumed kava.
19. The complainant also danced, she danced with the accused twice who was the Assistant Supervisor for about 5 minutes each time. After the dance the complainant sat with one of the site Supervisor's from Nabua they talked, chattered and drank. The complainant also had two puffs of smoke given to her by the accused. Thereafter the complainant went and sat with the same lady she was talking to earlier and was drinking vodka cruiser. By this time the complainant was really drunk. This was all the complainant could remember and she woke up the next day at about 6am.
20. When the complainant woke up she noticed that her boxers which is like an underwear was around her waist and she was wearing the same clothes she had worn the night before. The complainant went into the kitchen to eat since she was hungry and hung over. She saw her room mates and also Melba the Operations Manager sitting on the sofa. Since there was no lighter in the kitchen the complainant went outside to look for one. It was the accused who gave the complainant a lighter at this time the complainant noticed that the accused had a guilty look on his face but she did not bother.
21. During the day the complainant met the head of Purchasing Department Ronil and a lady from the Supervising Team. Ronil told the complainant that he had to chase the accused twice from her room while she was sleeping. The first time Ronil chased the accused was when he was about to rape her and the second time the accused had already raped her.

22. A female member of the staff was called by Ronil to put on the clothes the complainant was wearing. This lady said it was hard to put back her underwear so this lady had just put on her legging and t-shirt.
23. The matter was reported to the Sigatoka Police Station the same day by the complainant and she was medically examined.
24. In cross examination the complainant remembered that she danced with the accused twice, however, she agreed in her police statement she had told the police officer writing her police statement that she danced with the accused three times but she was not dancing too close. The complainant denied dancing in a manner to get the accused attention.
25. The complainant could not recall going to the accused who was sitting at the deck or talking about work or the party. The complainant stated that it was not true that she had spoken to the accused and told him that it was good to see him in person. The complainant also stated that it was not true that the accused had said "*I need you*" and she did not say it's up to him and she was not smiling at the time.
26. The complainant also denied kissing the accused on the cheeks before leaving. She said she cannot remember when she was in her room and she does not know or remember the accused had come into her room to wake her or kissed her or that she had spread her legs apart or the accused had touched her vagina, her moaning as a result of sexual arousal and one Ronil coming into the room and disturbing the two or the accused licking her vagina and then penetrating her vagina with his penis and then at this time she was holding his waist with her hand.
27. The complainant maintained that she was not conscious and she has no recollection of what had happened to her that night. She further stated that she was unconscious and she did not at any point in time give the accused consent to do what he did to her.

28. The second witness Ronil Dutt informed the court that he works for Mobil On the Go Pte Ltd. In 2021 the witness was employed by the same company as a Purchasing Officer. On 6th February, 2021 Ronil with his team from Suva came to Sigatoka for a staff retreat and team bonding get together.
29. The function was organized at a Resort where all the Supervisors from Central and Western Division were invited about 20 staff attended.
30. The evening programme started around 5.30pm with kava drinking and then drinks were served from about 8.30pm. The main function was in the Villa which had three rooms, a living room and a balcony, all the female staff were accommodated in this Villa. The male staff were accommodated away from the Villa.
31. The witness was the person organizing the food and drinks for the event so he was quite busy that evening. He had taken a few glasses of beer as well. As the party continued the complainant started to vomit and she knocked out.
32. The complainant was taken to her room she continued vomiting and she fell asleep beside the bed, the room was cleaned and she was put on the bed. According to the witness the complainant was unconscious the witness and the other staff including Yogita helped in cleaning the room and putting the complainant on the bed and he closed the door and left.
33. After the complainant was in bed the staff went to enjoy the party. After a few hours when the witness was going to get some beer from the kitchen he saw the door of the complainant's room slightly open he went inside the room switched on the light and he saw the accused on the bed. The accused was an Assistant Trainee Supervisor at Aero town, Nadi.

34. The witness saw the accused on top of the complainant trying to do something to her. The complainant was unconscious her hand was straight and she was not moving by this time it was about 10.30pm. Upon seeing the witness the accused got off from the complainant and stood beside the bed. The witness asked the accused what he was doing in the complainant's room the accused replied that he just came to see the complainant.
35. The witness said *"if you want to see what you doing on top of her."* The accused said *"sorry bro"*, *"sorry bro"* the witness said what you doing is wrong and he warned the accused by saying *"I don't want to see you in this room"*. The witness at this time told the accused to go outside, after the accused left he switched off the light and closed the door. The door could not be locked because the lock was not working.
36. The witness did not tell anyone, the party continued at about 12.30pm the witness went to get some beer he again saw the complainant's room door open he went into the complainant's room and switched on the light. The witness saw the accused on top of the complainant having sex with her. The accused pants were down and the complainant's pants were at her ankle, the accused was moving up and down. The witness shouted at the accused, who stood up and his pants fell down. The witness saw the complainant was still unconscious, not saying anything or making any sound but sleeping with her hands straight. The witness asked the accused what he was doing the accused said *"vale sorry"*. The witness replied *"this time no sorry for you,"* The accused was trying to pull his pants but he could not at the time.
37. After wearing his pants as the accused was about to leave the room the witness held the accused and told him to dress the complainant the

accused tried but he could not. Both left the room when the witness went into the balcony he saw Yogita the Supervisor of Sigatoka branch.

38. The witness told Yogita what he had seen and he asked Yogita to dress the complainant. When both went into the complainant's room upon seeing the complainant Yogita started crying. It was difficult for Yogita to dress the complainant the incident was relayed to the Operations Manager. The party was stopped by the Manager and everyone left for their rooms.
39. In the morning there was a discussion between the Operations Manager, Yogita and the witness. When the complainant was told about what had happened the complainant was only staring, shocked not saying anything and then she started crying. Later the matter was reported to the police.
40. In cross examination the witness said he did not see the accused and the complainant dancing together. The witness had informed the person in charge of the resort that the lock in the room was not working. The witness maintained that when the accused was on top of the complainant she was unconscious, when suggested that he was assuming the accused was taking advantage of the complainant the witness said *"actually I saw from my eyes that Isaia was on top of her and was having sex with her."*
41. The witness denied that he was not sure about what exactly was happening. Upon further questioning the witness agreed the complainant was conscious when he found the complainant and the accused in the room.
42. In re-examination the witness clarified that when the accused was having sex with the complainant, the complainant was unconscious. The witness further stated that there was no body movement of the complainant, when

her name was called she was not responding so he was 100% sure the complainant was unconscious.

43. The final prosecution witness Yogita Mani informed the court that she is the Site Supervisor at Sigatoka branch of the company. On 6th February, 2021 there was a team bonding get together of all the supervisors and staff at a Resort. The accused was also part of the get together.
44. After 1 am Ronil came and called the witness and told her that something had happened to the complainant. In the complainant's room she saw the complainant in a bad situation she tried to wake her up and also dress her. The witness further stated the complainant was half naked and she was not responding when the witness was waking her. The witness even tapped the complainant's cheeks, according to the witness it was a sad situation she also saw the complainant's vaginal area was wet so she wiped it with the bed sheet.
45. Finally with the help of another staff the complainant was dressed even at this time the complainant was not responding, motionless and knocked out. When the complainant woke up in the morning she did not have any idea what had happened to her. When the complainant was told what had happened to her she started to cry.
46. This was the prosecution case.

DEFENCE CASE

47. At the end of the prosecution case, the accused was explained his options. He could have remained silent but he chose to give sworn evidence and be

subjected to cross examination. This court must also consider his evidence and give such weight as is appropriate.

48. The accused informed the court that in 2021 he was employed as the Assistant Site Supervisor by Mobil On the Go. On 6th February, he was part of the company staff get together. The accused knows the complainant and they used to talk over the phone in regards to company matters. As the party progressed the complainant approached the accused for a dance. At one time the complainant turned around and danced moving up and down and shaking her buttocks towards him. The accused said this was dirty dancing.
49. After dancing both went to sit and had their drinks, according to the accused the complainant while dancing was very close to him they danced with each other three times. After dancing while chatting with each other during the conversation the accused said he wanted her and also needed her, the complainant smiled and replied *"it's up to you"*. They started to drink and after a while the complainant kissed his cheek and left. At this time the accused felt romantic.
50. Later on the accused started looking for the complainant he finally found her in her room. When inside the room he started to wake her and then laid on top of her and kissed her then he touched her vagina and put his hand through her panty whereby she started to open her legs. At this time the complainant was moaning the accused knew she needed him while he was on top of the complainant Ronil entered the room shouted at him and chased him outside. The accused went to the deck and started to drink again.

51. After sometime the accused again went into the complainant's room he started kissing her, touched her vagina and she opened her legs. The accused pulled the leggings and panty of the complainant to her knees and then he started to lick her vagina, the complainant started to moan and when he touched her vagina she started to touch his waist.
52. The accused knew that she needed him so he took out his penis and had sex with her. The complainant was holding him tightly towards her and moaning. While having sex Ronil entered the room and scolded him, the accused stood up took his pants and put it on. Ronil asked the accused to dress the complainant he tried but could not do it.
53. The party continued and he had his drinks. The accused said he had sexual intercourse with the complainant her body language, dancing, kissing him, grabbing his waist, moaning showed that she was interested in him.
54. In cross examination the accused stated that the complainant was dancing with other boys as well. When the complainant was dancing with him her body was not touching him and there was a distance of about ½ meter between them. The accused stated that the complainant never said that she wanted to have sex with him, when he entered the complainant's room the first time she was asleep on the bed. The accused disagreed the complainant was knocked out the first time he had entered her room. The accused agreed the complainant had never invited him to her room.
55. The accused agreed that he was interviewed by the police under caution on 7th February, 2021. He was referred to question and answer 90 and 91 which was read as follows:

Q: 90 Then what do you do?

A: *I enter inside the room where she was sleeping and try to awake her.*

Q: *91 Did she awake when you awake her?*

A: *No.*

56. When it was put to the accused that despite his numerous attempts to wake her she was asleep the accused said *"she'd rather be asleep but when I kissed her I knew that she was not asleep"*.
57. In respect of the first incident the accused said the complainant was having a good time with him when Ronil came into the room the complainant did not stop Ronil from asking the accused to leave the room. The accused agreed the complainant had not invited him into her room the first time.
58. In respect of the second incident the accused denied going into her room with the intention to have sex with the complainant. When inside the room it was by the complainant's action he knew that she needed him and wanted to have sex with him but the complainant had not expressly said *"Isaia I want to have sex with you."*
59. The accused maintained that the complainant had consented to have sexual intercourse with him and she was not knocked out. The accused was again referred to his^t caution interview question and answer 108 and 109 as follows:

Q108: *Was "T" awake or asleep?*

A: *She was fast asleep.*

Q109: *Did "T" give you consent to lick her vagina?*

A: No.

60. The accused disagreed that the complainant was fast asleep when he entered the room the second time, he also agreed that the complainant had not consented for him to have sex with her. The accused denied that he said "*sorry brother*" to Ronil because his actions were wrong.
61. The accused maintained that the complainant was not knocked out and it was her body language that told him that she wanted to have sex with him but at no time he had asked the complainant if she wanted to have sex with him.
62. On re-examination the accused stated when he was having sex the complainant was moaning, she grabbed him by his waist pulling him towards her which the accused said showed that she needed him.

PREVIOUS INCONSISTENT STATEMENT

63. This court directs its mind to the fact that the state counsel in the cross examination of the accused had questioned him about an inconsistency in his caution interview which he had given to the police when facts were fresh in his mind with his evidence in court.
64. This court is allowed to take into consideration the inconsistency between what the accused told the court and his caution interview when considering whether the accused is believable and credible. However, the caution interview is not evidence of the truth of its contents. It is obvious that passage of time can affect one's accuracy of memory. Hence it cannot be expected for every detail to be the same from one account to the next.

65. If there is any inconsistency, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the accused. If it is significant, then it is for this court to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, then this court may conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for this court to decide to what extent that influences the reliability of the witness evidence.
66. This was the defence case.

ANALYSIS

67. The prosecution states that the complainant and the accused are known to each other, both were working for the same company in different divisions. The complainant was a Site Supervisor in the central division and the accused was an Assistant Site Supervisor in the Western Division.
68. Both were part of the team bonding exercise held in one of the resorts in Sigatoka. After the short formal function the party began there were lots to drink and eat. The complainant was enjoying the get together by meeting her colleagues from other branches in the process she drank excess alcohol.
69. The complainant was so drunk that she vomited and passed out while chatting with a colleague. She was taken to her room where she again vomited in a state of unconsciousness before she was put on the bed. As the party progressed into the night the accused sneaked into the room of the complainant. He was on top of the complainant when he was disturbed by Ronil, the accused realizing his wrong doing said he was sorry for what

he had done. Ronil chased the accused out of the room warning him not to come into the room again. It is unfortunate that the room did not have a lock so Ronil closed the door.

70. During the early hours of the morning the accused once again sneaked into the room of the complainant he went on top of the complainant pulled her leggings, pants and panty to her knees removed his pants and started having sexual intercourse with the complainant who was in an unconscious state.
71. Whilst in the process of having sexual intercourse Ronil entered the room and saw the accused on top of the complainant. The accused hurriedly got off the complainant and wore his pants and again said sorry to Ronil before leaving the room.
72. The prosecution submits that since the complainant was unconscious she did not have the capacity to consent. Furthermore, the accused knew or believed the complainant was not consenting or did not care if she was not consenting at the time. Ronil and Yogita had seen the condition of the complainant and had narrated in detail what they had seen and observed.
73. The prosecution is asking this court to look at the state in which the complainant was after consuming excess amount of alcohol. The observations of the complainant by Ronil and Yogita were consistent with each other. The complainant was so drunk that she was unconscious and not responding. These witnesses tried their best to wake the complainant but she did not wake up.
74. Finally, it is submitted that due to excessive drinking the complainant had lost her capacity to give consent to have sexual intercourse with the accused. The complainant honestly could not remember what had

happened to her after she knocked out only to wake up the next morning and be told about what had happened to her.

75. On the other hand, the defence says the allegation against the accused does not make sense. The complainant led the accused on by her dirty dancing with the accused, drinking with him and kissing on his cheek. Ronil had assumed that the complainant was unconscious when the reality is that she was conscious and responsive to the accused who had opened her legs, moaned in a pleasant manner and was holding the accused tightly.
76. The apology by the accused to Ronil was a normal reaction of a person who was suddenly disturbed by an unexpected intruder there is nothing wrong in what the accused had said. Ronil should not be believed because he was imagining things as a result he had assumed that the complainant was unconscious when in fact the accused was the only person who could say anything about the state and condition of the complainant due to his close proximity with the complainant. All the prosecution witnesses were drunk they cannot be sure that the complainant was unconscious and therefore her incapacity to consent should not be accepted and/or believed. The accused has honestly admitted having sexual intercourse with the complainant but with her consent.
77. Furthermore, the complainant did not say she was consenting because it was her reputation and her family which was at risk. The accused could have denied having sexual intercourse but he did not because the complainant had agreed to allow the accused to have sexual intercourse with her she was the one who was moaning, holding the accused tightly and then having consensual sexual intercourse. There is no evidence of any threat or force or pressure on the complainant what happened that

night was what the complainant had agreed to with her conscious mind which she was at liberty to do and she did.

78. The defence also submits that the complainant was a heavy drinker who is taking advantage of lost memory by not telling the truth of what had happened. The complainant despite remembering every bit of her consensual sexual intercourse with the accused is saying she cannot remember anything should not be believed by this court. The other prosecution witnesses also should not be believed because they were also drunk and they are making up a story to make the accused look like the perpetrator when in fact he is the victim here.

79. Finally, the defence is asking this court not to believe the complainant she did not tell the truth because after consenting to have sexual intercourse with the accused the complainant is not owning up or taking responsibility of her participation in a consensual sexual intercourse with the accused. She is blaming the accused by not telling the truth. The accused was upfront in what he told the court he gave a detailed account of what had happened that early morning he was honest in admitting the act he did and what the accused did would not have been possible had the complainant not consented.

DETERMINATION

80. I would like to once again remind myself that the burden to prove the accused guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if I reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. The only issue in this trial is whether the complainant had consented to have sexual intercourse with the accused.

81. After carefully considering the evidence adduced by the prosecution and the defence, I accept the evidence of the complainant and the two prosecution witnesses as truthful and reliable. The complainant told the truth when she said that she had knocked out after drinking excessive alcohol.
82. I also accept that Ronil and Yogita told the truth of what they had observed. I have no doubt in my mind that all the prosecution witnesses told the truth in court their demeanour was consistent with their honesty. All the prosecution witnesses were also able to withstand cross examination and were not discredited as to the main version of their evidence and observations. The defence did not raise any motivation by the prosecution witnesses in falsely implicating the accused for the rape of the complainant.
83. The only issue in this trial is whether the complainant had consented to have sexual intercourse with the accused that early morning. It is not in dispute that the complainant and the accused were known to each other. The prosecution argument has been that the complainant did not have the capacity to consent due to her intoxication. The observations by Ronil and Yogita are relevant in this regard which supports the evidence of the complainant that she does not remember what had happened to her.
84. When the complainant woke up the next morning she had absolutely no recollection of what had happened to her.
85. I accept that the complainant did not have the capacity to consent to what the accused had done to her.

86. It is to be noted that the legal meaning of consent is wide which also states inter alia that submission without physical resistance to an act of another shall not alone constitute consent here the complainant did not have the capacity to consent due to excessive drinking hence she was in no position to consent to have sexual intercourse with the accused.
87. On the other hand, the accused did not tell the truth he gave a version of events which does not add up. It is difficult to accept that the accused was led on by the complainant to have sexual intercourse with her. This is not a case of drunken consent but a case of lack of capacity to consent due to excess drinking of alcohol.
88. Furthermore, I also accept that it was the accused who had told the truth to the police officer who was conducting his caution interview when the facts were fresh in his mind. In cross examination I also noted that the accused was not answering questions asked he was putting up a bold face to show to the court that he was a victim of the complainant's lack of honesty in saying that she had consented to have sexual intercourse with him. I reject the evidence of the accused as unreliable and untruthful. This court rejects the defence of consent as not worthy of belief.
89. In *State v Rupeni Suguturaga and another* [2019] FJHC 1070; HAC117.2016 (8 November 2019) at paragraphs 46 and 47 I had mentioned the following about capacity to consent as follows:

46. In a situation where the capacity of the complainant to consent due to self-induced intoxication through drink and drugs is in issue the following points may be considered by the court (Blackstone's Criminal Practice 2018 [B3.30]):

- a. *Consumption of alcohol or drugs may cause someone to become disinhibited and behave differently. If she is aware of what is happening, but the consumption of alcohol or drugs has caused her to consent to activity which she would ordinarily refuse, then she has consented no matter how much she may regret it later. The fact that a person makes an unwise choice does not mean that she lacked the capacity to make it. A drunken consent is still a consent if a person has the capacity to make the decision whether to agree by choice.*
- b. *However, if a complainant becomes so intoxicated that she no longer has the capacity to agree, there will be no consent. Clearly she will not have the capacity to agree by choice where she was so intoxicated through drink or drugs, and her understanding and knowledge are so limited that she was not in a position to decide whether or not to agree. (This relates to understanding and knowledge of what is going on, as opposed to the quality of the decision-making.)*
- c. *A person may reach such a state without losing consciousness. For instance, she may be in a state where she knows that she does not want to take part in any sexual activity with someone, but she is incapable of saying so. Alternatively, she may have been affected to such a degree, that, whilst having some limited awareness of what is happening, she is incapable of making any decision at all.*
- d. *If a person is asleep or has lost consciousness through drink or drugs, she cannot consent, and that is so even though her body responds to the accused's advances.*

47. *The English Court of Appeal in R vs. Gael Tameu Kamki [2013] EWCA Crim. 2335 had approved this approach.*

90. Furthermore, the English Court of Appeal in *R vs. Bree, [2007] 2 All ER 676* at paragraph at 34 made a pertinent observation about lack of capacity to consent in the following words:

“ ...If, through drink (or for any other reason) the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting, and subject to questions about the defendants state of mind , if intercourse takes place , this would be rape...”

91. In my considered judgment the complainant’s alcohol consumption had vitiated her capacity to consent to have sexual intercourse the complainant in fact was disabled by the excessive drinks she had consumed to have formed any capacity to consent. The defence has not been able to create a reasonable doubt in the prosecution case.

CONCLUSION

92. This court is satisfied beyond reasonable doubt that the accused on 7th, February, 2021 had penetrated the vagina of the complainant with his penis without her consent.

93. This court also accepts that the accused knew or believed the complainant was not consenting or did not care if she was not consenting at the time.

94. In view of the above, I find the accused guilty of one count of rape as charged and he is convicted accordingly.

95. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka

20 June, 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.