

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 31 of 2021

BETWEEN : **THE STATE**

AND : **NORMAN JAMES SNODGRASS**

Counsel : Ms. Tamanikaiyaroi, U for the State
: Ms. Malimali, B for the Accused

Judgment : 24 July 2023

JUDGMENT

1. The Accused is charged with four representative counts of rape, on allegations that he had carnal knowledge, digital and lingual penetration of the Complainant's vagina, and penetrated her mouth with his penis without her consent.
2. A representative count means the State is alleging more than one separate act of offending in each count.
3. For each representative count, the Prosecution is required to prove that between the specified dates, at least one act of rape of the kind alleged, occurred. (Section 70 (3) Criminal Procedure Act 2009; see also *Koro v The State* Criminal Appeal No: HAA0048 of 2002L 2 October 2002; *State v Kabaura* Criminal Case No. HAC 117/10, 9 August 2010, at [9]).
4. To these charges the Accused pleaded not guilty and the matter proceeded to trial.

5. The burden of proving the Accused's guilt rests with the Prosecution throughout and never shifts to the Accused.
6. The standard is beyond reasonable doubt. The burden is discharged when the Prosecution establishes each element of the offences charged beyond reasonable doubt so that the Court is sure of the Accused's guilt on each count.
7. With the presumption of innocence in his favour, the Accused has no obligation to prove anything, let alone his innocence.

Elements

8. For rape in Count 1, the Prosecution is required to prove the following elements beyond reasonable doubt:
 - Between 1 January 2019 and 25 December 2020
 - the Accused
 - had carnal knowledge of the Complainant
 - Without her consent
9. Carnal knowledge is penetration of the vulva, vagina or anus by the penis. (*Reddy v State* [2018] FJCA 10; AAU06.2014 (8 March 2018)) It is rape if done without the other person's consent.
10. In Count 1, the Prosecution alleges that the Accused had penetrated the Complainant's vagina with his penis without her consent.
11. To prove digital rape in Count 2, the Prosecution must prove that
 - the Accused
 - penetrated with his finger
 - the vagina of the Complainant
 - without her consent

12. For the charge in Count 3, the Prosecution must prove that

- the Accused
- penetrated with his tongue
- the vagina of the Complainant
- without her consent.

13. To prove the charge in Count 4, the Prosecution must prove beyond reasonable doubt that

- the Accused
- penetrated the Complainant's mouth
- with his penis
- without the Complainant's consent

The Prosecution case

14. The Complainant gave evidence that she was born on 11 January 2005. She is currently living in Lami with her parents and a brother, and attends secondary school in Suva. From 2019 to 2020, she lived in Nasese with the Accused and her aunt Anaseini who is the Accused person's partner. Her aunt owned a secondhand shop in Suva and was at work most of the time. The Accused worked from home, doing the accounts for the shop and also had a t-shirt printing business which he operated from home. Also staying at Nasese at the time were the couple's two sons with whom she shared a room. The Accused dropped them off to school in the mornings and she would return in the afternoon by bus. The Accused would be the only one at home when she returned from school.

15. Around term two in 2019, she injured her leg at school and had to stay at home as she was not able to walk. One day while lying down in the sitting room, the Accused gave her his phone with a pornographic video on it for her to watch. It made her uncomfortable because he was her aunt's de facto partner and she did not know why he would do such a thing. She did not tell her aunt or anyone else as the Accused had told her not to tell anyone.

16. About a week later, the school called for her to come for end of term two exams. After the exams, she went with the Accused to her parents and teachers interview as her aunt was at work. After the interview, the Accused bought some burgers and juice on their way home. She had her burger and juice while watching TV at home. While eating, the Accused came and sat very close behind her. She was uncomfortable as he was so close, so she leaned forward. He touched her neck and said "These are the sensitive parts of a girl" while his hand was moving down her body. She was afraid and shocked. She was shaking and had goosebumps on her body. His hand went down the side of her body and into her pants where he then touched her vagina with his middle finger. She demonstrated in Court how the Accused had touched her vagina with his middle finger in a stroking, digging way.
17. When she pulled his hand out, the Accused pushed her to lie on her back. He pulled down her shorts and inserted his tongue into her vagina. She told him to stop when he pulled down her pants but he took no heed. She felt uneasy and frightened. After about five seconds, the Accused stood up and left. She pulled up her pants and sat on the settee.
18. When the Accused returned, he had his pants down and he showed her his penis. He told her that that is what it looked like. She looked away and he told her to touch it. He sat next to her and made her touch his penis. This incident happened after 1pm when they were alone at home. She did not tell her aunty as she did not know how to tell her and also because she was not sure whether her aunt would believe her or not.
19. She recalled another time some weeks after the incident in the sitting room, when she was at home alone with the Accused. She said he called her to the bedroom to help him look for something in a pile of clothes next to the bed. As soon as she was inside the room, he locked the room, took off his pants, removed her clothes and pushed her onto the bed. He tried to insert his penis into her vagina but was unable to do so. She told him to stop and told him it was painful. He swore and said it was supposed to be painful. He got a blue packet with a white cream inside saying it was a lubricant and applied it on her vagina. He then inserted his penis inside her vagina and it went in. She said "no" to stop him and pushed on his stomach but he still forced it in until a white thing came out onto her stomach.

She felt disgusted and when she stood up, there was blood on the bedsheet. She said she did not agree to what the Accused did to her on this day. The Complainant said that the Accused did this to her two times.

20. Soon after the incident in the bedroom, and on another parents and teachers interview day, she was again alone at home with the Accused. The Accused had gone with her to the interview and when they returned, he asked her to help him peel off the vinyl stickers to be put on t-shirts. He did t-shirt printing in the nanny's quarters behind the main house. When she went in to help, he locked the door behind her. He pulled down his pants and told her to suck his penis. She turned her back on him but he turned her around, pulled her pants down, pushed her on the table and licked her vagina. She did not say or do anything as she was too scared to act. He told her to suck his penis. When she turned away, he held her face and turned it to his penis, telling her to hurry up and not waste time. He said it was easy money and he would give her money. He pressed her mouth and put his penis inside, moving back and forth until something came out. She felt disgusted. He then wore his pants and opened the door after she put her pants on. She said he later gave her some money.
21. She could not tell anyone until sometime in 2020 when she was walking home with her cousin Maraia who was also staying with her baby in Nasese at the time. Maraia told her that the Accused had shown her a pornographic video. She told Maraia that the Accused had done the same thing to her. She also told Maria that the Accused had forced her to suck his penis.
22. The matter came to light when her aunty Anaseini told her grandmother and uncle in Makoi and also her father in Koro that she was pregnant. Her mother took her to a place in Waimanu where she was medically examined and the matter was reported at the Totogo Police Station. She went to live in Makoi with her grandmother after that and never went back to Nasese until she had to go back to show the places where the alleged offences took place.

23. She identified the Accused in Court as Norman Snodgrass, the person who committed the alleged acts on her.
24. She said the Accused penetrated her vagina with his penis twice; digitally penetrated her vagina two to three times; penetrated her vagina with his tongue three to four times; and penetrated her mouth with his penis four times. She said she did not agree for him to do any of these things to her.
25. In cross-examination, the Complainant agreed that she was treated well in Nasese and said she did not tell anyone because she was just too scared, and did not know if anyone would believe her. She said she was only there to get an education to be able to get a good job to support her family. She prayed that one day it would "come up".
26. The Complainant's cousin Maraia Bulidromodromo testified that she and her baby went to live with the Accused and her aunty Anaseini in Nasese shortly after she had a baby in July 2020. At the time, only the Accused, her aunt, and her aunt's two children were living there. The Complainant came from Koro a month or so later and stayed in Nasese with them. Maraia said she initially stayed home with her baby and after a few months, went to work in her aunt's shop.
27. She was close to the Complainant while they stayed in Nasese and did everything together. She left Nasese in 2021 after what happened between her uncle Norman and the Complainant.
28. Sometime in September 2020 while walking back home with the Complainant, she told the Complainant that the Accused showed her a pornographic video in the living room a few months after she gave birth, and told her not to tell anyone. The Complainant told her that the Accused had also done the same thing to her. The Complainant started crying, saying that the Accused had also forced her to have sex with him when they were alone at home.
29. Dr. Losana Burua medically examined the Complainant on 14 January 2021. She found on both sides of the labia minora, lacerations that were old and others that were still healing. There were healed tears at 5 o'clock and 7 o'clock of the hymenal ring. She explained

that an old or healing wound would be more than six days old. According to the patient, the last incident was about two weeks before she presented for medical examination.

30. The tears to the hymenal ring could have been caused by anything forcefully penetrated into the hymenal ring.
31. Dr. Burua said the genitalia injuries were in several stages: they were old, with some already healed and others still in the healing process. The injuries indicated blunt force trauma by an erect penis.
32. She said the superficial injuries on the labia minora would take one to two weeks to heal, but could take up to six weeks to heal, depending on the severity of the injury. She said the healed tears to the hymenal ring were more than 6 weeks old. She agreed that her finding that the injuries indicated blunt force trauma by an erect penis was based on what she was told by the patient.

Defence case

33. The Accused chose to give evidence though he did not have to do so. He testified that he is 36 years old and lives with his de facto partner at Nasese. In January 2019, he went to Australia to pick up his son and a little girl they had looked after. There were six people at home, including the Complainant, when he returned towards the end of January. Sometime in July or August 2019, his partner's niece named Sera and her baby also came to live with them. He and his partner have seven children between the two of them and the children come and stay with them and leave as they pleased. They also took in a child in 2015.
34. He said the Complainant came to live with them in Nasese in 2019 after she had problems where she was living in Makoi.
35. Sera and her baby left around Easter in 2020 and Maraja and her baby moved in on 19 July 2020. Another niece named Selai moved in in August 2020.

36. When the COVID pandemic hit in 2020, all the school children stayed home. During this time, the Complainant went back to Koro and returned sometime either in the end of July or first week of August when school re-opened.
37. He said the Complainant was very naughty to him: she would joke to him all the time, would want to sit in the front seat when he got into the vehicle, and would ask him for work so she could get extra money. When he dropped his wife and children off at church for Sunday school, the Complainant would jump back into the vehicle when he went into town for food and snacks for the church. This annoyed him and he told his nieces and partner to talk to the Complainant as it was not good her sitting in the front seat all the time.
38. In 2019, the Complainant's mother came to stay with them twice or three times. On one of these visits, he had gone with the Complainant, her mother and the little child they were looking after, to parents and teachers interview. They printed some t-shirts when they returned as the Complainant's mother had wanted to take some with her when she returned home.
39. He denies all the allegations against him saying they did not happen. He said the Complainant was behaving strangely around him. She would come home alone from school even though she was supposed to wait to come home together with the other children. She would follow him and ask him to help her with her school work. He knew the Complainant was being silly so he asked his partner to talk to her.
40. He said when Maraia and her baby moved in, the Complainant got jealous that they were getting all the attention. She started causing trouble by calling the baby's father to come to the place without consulting the Accused and his partner.
41. He said the Complainant made up these allegations against him because he started getting uncomfortable with her and he kept telling her; because she liked him and could not get him; and also because she was jealous of Maraia's baby that he and his partner were looking after. He agreed that the Complainant had never told him that she loved or wanted him and that he had only assumed it from what she did.

Analysis

42. At trial, it was not disputed that the Accused is Norman Snodgrass, the de facto partner of the Complainant's paternal aunt, Anaseini. It was not disputed that the Complainant had lived with the Accused and his de facto partner at their home at Nasese from 2019 to 2020 and left Nasese after these allegations came to light.
43. The Accused denies all the accusations in the charges against him saying that the Complainant fabricated these allegations because she was in love with him and he did not return her affections. He also says that the Complainant was jealous of all the attention he and his wife were giving to Maraia's baby they were looking after.
44. The Prosecution case relies primarily on the Complainant's evidence. If her evidence is true, then the Accused is guilty of the four representative counts of rape against him.
45. The medical evidence supports sexual intercourse but does not of its own prove that it was the Accused that had had sexual intercourse with the Complainant.
46. Of course, the disclosure to Maraia that the Accused had shown her a pornographic video and had forceful intercourse with her, is not evidence of the rape alleged. It is not independent evidence of the facts alleged and is not proof of the allegations. The Prosecution relies on this disclosure to show consistency on the part of the Complainant.
47. Said Gates CJ in Raj v. The State [2014] FJSC 12; CAV0003.2014 (20 August 2014):
- The complaint need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence ...
48. The Complainant did not tell anyone until her conversation with her cousin Maraia. She was asked why she had not told her aunt, her parents in the village, the teachers and her friends at school, or anyone else about what she says the Accused had done to her.

49. She said her aunt Anaseini was caring, but was often pressured and stressed out from work and would take this out on them. She said it was for this reason that most of the time, they were scared of her aunt. She also said she did not tell because she was not sure whether her aunt would believe her. She could not tell her cousins David and Jeremiaah as they did not talk to each other about their personal lives. She could not tell her friends at school as she did not know how they would react, nor could she tell her parents in the island because she was scared and did not know how they would take it. I find the reasons for the delay in reporting to be not unreasonable.
50. A delayed report does not necessarily point to falsity anymore than a prompt report inevitably points to a truthful complaint. (R v H [1997] 1 NZLR 673)
51. I accept and believe that there were many other people living in Nasese with the Accused and de facto and their family at different times between 2019 and 2020. However, I do not believe that the Accused and the Complainant were never alone at the house in Nasese during this time.
52. In assessing the evidence, the Complainant struck me as a reliable and credible witness. I accept her evidence on representative counts ~~one~~^{two} and ~~two~~^{three} that sometime in term two in 2019, after returning with the Accused from her parents and teachers interview, the Accused had penetrated her vagina firstly with his finger and then with his tongue. She said she was too scared and shocked to do anything and did not say anything when he digitally penetrated her. The failure to resist or struggle does not necessarily connote consent. Indeed, section 206 (1) of the Crimes Act provides that "...submission without physical resistance by a person to an act of another shall not alone constitute consent."
53. I believe her when she says that she did not consent to the Accused doing these things to her. I accept her evidence that she had told him to stop when he pulled her pants but he continued to do so and then put his tongue into her vagina. I feel sure that he knew she was not consenting when he penetrated her with his finger and then with his tongue.

54. He did not strike me to be a truthful witness, and on more than one occasion, I found him floundering, evasive and uncomfortable in cross-examination. I reject as untrue his evidence that the allegations against him were concocted by the Complainant. The reasons he gave for the Complainant bringing these very serious allegations against him were halfhearted and unconvincing. Of course, he does not have to prove his innocence and, even if I reject his version of events, the Prosecution must still prove its case beyond reasonable doubt before I can find him guilty.
55. On representative count ~~three~~^{one}, I believe the Complainant's evidence that the Accused had penetrated her vagina with his penis in his bedroom and that she did not agree for him to do so. I accept her evidence that she had told him to stop when he was trying to insert his penis and find that he knew she was not consenting when he inserted his penis into her vagina.
56. On the last representative count (count four), I believe the Complainant's evidence that the in the nanny's quarters after parents and teachers interview, the Accused had inserted his penis into her mouth without her consent. I accept that he forced her mouth open to suck his penis and knew she was not consenting.
57. I reject his evidence that these allegations were fabricated by the Complainant out of spite for him not reciprocating her love; and out of jealousy for a baby he and his wife were looking after.
58. I feel sure of his guilt on all four counts and convict him accordingly.




Siainu F. Bull
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Pacific Chambers for the Accused