

**IN THE RESIDENT MAGISTRATES COURT AT LABASA
CRIMINAL JURISDICTION**

Criminal Case No 39/08

STATE -v- VILITATI RAVAI

For Prosecution : Ms Vavadakua (ODPP)
Accused : Mr Sen

Date of Hearing : 29 August 2017
Date of Judgment : 30 October 2017

JUDGMENT

1.0 Background

1.1.1 **VILITATI RAVAI** is charged with an amended charge of **Annoying a Person** contrary to section 154 (4) of the Penal Code. Given that the proceedings had been pending for some time, the court refused any further adjournments and proceeded to trial. The particulars of the offence read as follows:

Particulars of Offence

VILITATI RAVAI on the 11th day of October 2007, at Nanuku Street, Labasa Town in the Northern Division uttered the words 'au via veicai kei iko' translated to mean ' I want to fuck you' intending that such words be heard by **ALISI RABUKA** and thereby insulting her modesty.

1.2 The trial was conducted on 29 August 2017 and concluded on the same date. The court concluded that there was a case to answer for the Accused.

2.0 The Charging Sections

2.1 Section 154 (4) of the Penal Code provides as follows -

Indecently insulting or annoying females

(4) Whoever, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or girl, or whoever intrudes upon the privacy of a woman or girl by doing an act of a nature likely to offend her modesty, is guilty of a misdemeanour, and is liable to imprisonment for one year.

(Amended by 11 of 1948, s. 2, and by 21 of 1950, s. 3.)

3.0 The Elements

3.1 The Elements of the charge of Annoying a Person are-

- (i) The accused on the dates as per the charge (identification and date)
- (ii) intended to insult the modesty of a woman or girl by uttering a word or making a gesture or exhibits any object;
- (iii) intending that such words or gesture or object is heard or seen by the woman or girl;
- (vi) is guilty of misdemeanour and liable to 1 year imprisonment.

4.0 Burden and Standard of proof

4.1 The burden of proof in this case is on the Prosecution, the State. The Prosecution is required to prove all the elements of the charge the accused is charged with beyond reasonable doubt. If the defence establishes to the Court's satisfaction that there is reasonable doubt, then the prosecution fails.

4.2 Lord Denning in Miller v. Minister of Pensions, in commenting on the proof beyond reasonable doubt stated: "it need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of

doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

5.0 Prosecution case

5.1 Prosecution called 1 witness to prove the charges against the accused.

5.2 The Material evidence of PW-1 **ALISI RABUKA** who stated that on 11 October 2007 she was studying in the room she shared with her cousin, the daughter of Accused. She is a high school student. There were three bedrooms in the house. Accuse and her aunt occupied one bedroom, she shared the second bedroom and there was another bedroom. She treated Accuse like a father to her. Her cousin was sleeping near the window. She was alone with the uncle's children. She then fell asleep. She heard someone calling her name and woke up to find the Accuse calling her. Her uncle came and shook her whilst she was in bed pulling her up and taking her towards the doorway which faced the living room. He requested for her to massage his leg. She was taken to his room and she felt scared. She massaged his legs and feet with oil. When it reached her knees he asked her in Fijian 'tarai mei na wai' meaning to 'touch his penis'. She felt weird and felt scared. She went to the bedroom door and he locked it. She made an excuse to go to the toilet and he followed her. She was standing at the doorway looking out when he enquired where she was going she was pulled back by him into the bedroom saying 'au via veicai kei iko' meaning in English 'I want to have sex with you'. She felt frustrated, scared and angry. She pushed him off her and she moved as quickly as possible to the other room. He pushed the second door of the living room back and kept telling her those words. She called out the names of the other occupants in their bedroom but they did not wake up. There was a girl 9 years and 2 boys one in class 1 and one in class 3. She told him to return to the bedroom first and she ran through the back door to the dining room to try and get away from him. He pulled her hands. She identified him in court as the Accuse.

- 5.3 Under cross examination PW-1 admitted the words 'au via veicai kei iko' meant Accuse wanted to have sex with her. She admitted it was forbidden to ask for Sex from Accuse. She admitted she denied his request. She admitted she felt he would force her to have sex and stated she wanted to go to the toilet but not intending to return for sex. She admitted if it was any other person asking for sex she refused. She stated he kept pulling her back wanting to have sex with her. She admitted he requested for her to massage his feet.
- 5.4 In re-examination she admitted she was offended by his request as she respected him as he was like a father to her.
- 5.5 PW-2 was WPC Ilisapeci Seru who stated that she conducted a caution interview with Accuse in 2007 whilst being an officer of Labasa Police Station. She admitted the interview was hand written and later typed and signed on each page. There were carbon copies of the interview notes conducted and recognised. There was also a typed version. She confirmed that she was looking at the carbon copy of the interview notes. He admitted to having requested complainant for sex in his interview but denied pushing her in the living room but not for forcing her to have sex with him. She identified the Accuse as the same person she interviewed that day. The caution interview in carbon copy and the typed was tendered as **Exh 1**.
- 5.6 In cross-examination PW-2 She did admitted that the victim ran away and hence showed to her that the victim's modesty was insulted by the Accuse request for sex.
- 5.7 Prosecution closed its case.

6.0 Defence Case

- 6.1 DW-1 denied victim ever referred to him as an uncle or father figure. He admitted he stated in Fijian 'iko rawa ni ko moce vata kei au' which meant in English 'can we sleep together'. Denied using the word 'sex'. He denied intending to insult or annoy complainant's modesty.

- 6.2 In cross examination Accused admitted he was the Ta lailai or 'uncle' of complainant. He admitted that he was related to complainant through his wife. He admitted his children and Alisi were home that night and he admitted asking her to massage him right up to the knees. When she sat at the bed he asked her to lie down and sleep with him. He admitted in the itaukei community it was taboo in the public community of itaukei's, this was indecent.
- 6.3 In re-examination he admitted that the request for sex was between 2 adults and denied that they had any blood relationship. He saw nothing wrong in asking for sex.
- 6.4 Defence closed its case.

7.0 Analysis of the Evidence

- 7.1 In this case the court is required to analyse the evidence and determine whether the prosecution has proven beyond reasonable doubt the elements of the offence.
- 7.2 The prosecution is to prove beyond reasonable doubt the elements of the offence. The identification of the Accused is known and has been identified by PW-1 who was present on the night of the alleged offence. The Accuse does not challenge his identity and what transpired that night.
- 7.3 The second and third elements of the offence that must be proven beyond reasonable by the prosecution.
- 7.4 The prosecution's evidence relies upon the caution interview and the evidence on oath of PW-1, PW-2 and the caution interview.
- 7.5 The court has also analysed the evidence and finds that the evidence of prosecution was credible, reliable, relevant and admissible. The court finds that the Accused had requested for sex from a female who was also his relative in marriage, his niece. Although there was no blood relationship, the fact that he was married to her aunt created a special

relationship in marriage that was to have been respected. He failed to do that. He had uttered words that in fact insulted her modesty when he had requested to have sex with her. There was a clear nexus between her massaging of his legs, his utterances of words suggesting sex in Fijian with the words 'come and touch my penis' and when he, later on the same morning after she refused asked to have sex with her. She had refused by stating her refusal and had attempted to run away from him. According to prosecution's evidence, he kept pulling her hand and pushing her towards the bedroom and to the bed.

- 7.6 When the court considers whether the words uttered were insulting to her modesty, the court is guided by the precedent case of Ratubalavu -v- State [2003] FJHC 98; HAA 13L; 2003S (4 April 2003) The facts in that case was that from the period of 1998 to 2011 the Accused, a step father would request his step daughter to massage his leg. On 27th May 2001 he then uttered to request to sex with complainant. The court found that there was no evidence to suggest the nexus between the utterances with the massaging of the leg to constitute an offence of Indecent Assault. However it was sufficient for the secondcount. Justice Shameem stated in her decision –

'On Count 2, the request for sexual intercourse to an unwilling victim, did constitute an offence under section 154(4) of the Penal Code. The maximum sentence under that section is imprisonment for one year. Although the request was insulting especially as it was directed at the Appellant's stepdaughter, I see no reason why the statutory maximum was imposed. A shorter sentence would have adequately reflected the betrayal of trust, and the disapproval of the community towards the act of the Appellant. Further, because the court record does not indicate the age of the victim (I see that she is described as a "girl" on Count 1 and as a "woman" on Count 2) there is no available information about the special vulnerability of the victim.'

- 7.7 The Accused has denied the charges disputing that his request for sex was between two consenting adults. The court is mindful that if the parties were not in any way related by virtue of the marriage, there was nothing to stop such a request. However where the

parties are related in marriage, and it is a niece and uncle relationship, Fijian communities value these relationships and protect and nurture them in a respectful manner. The actions by the Accused were no longer about consenting adults. It transcended into a relationship that was prohibited hence insulting her modesty.

7.8 The court finds that the prosecution has proven beyond reasonable doubt the elements of the offence of Indecently Annoying or Insulting a Female.

8.0 **Conclusion**

8.1 I find that you, VILITATI RAVAI, hereby stand convicted as charged and prosecution will submit your previous convictions and you are given time to offer your mitigation.

8.2 28 days to appeal.


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Senileba Levaci
Resident Magistrate

