IN THE SUPREME COURT OF FIJI (WESTERN DIVISION) 000188

A T L A U T O K A

Civil Jurisdiction

Action No. 228 of 1980

Between

IN THE MATTER OF
an application of
SITIVENI NAIDUMU

- and -

IN THE MATTER OF
a criminal action in the
Rakiraki Magistrate's Court between
Regina v. Sitiveni Naidumu

Mr. Khan — Counsel for the Complainant
Mr. Williams — Counsel for the Respondent

J U D G M E N T

The applicant was convicted on his own plea of the offence of rape contrary to Section 144 of the Penal Code and sentenced to four years imprisonment. The applicant is 33 years of age, the complainant was 18 years of age. The facts were read out in court, making it clear that the applicant forcibly had intercourse with the complainant against her will, after threatening to kill her if she continued to cry out. During the intercourse the applicant bit her on the breast and neck, leaving injuries noted by the doctor who later examined her. The applicant admitted the facts as presented to the court, and admitted a previous conviction, which was ignored by the court since it was minor and not relevant. In mitigation the applicant said only that he had not hidden himself but had helped them - presumably the police.

The sentence passed was somewhat severe, but by no means excessive in view of the prevalence of this type of offence, and well within the magistrate's discretion.

The applicant appealed against his conviction and sentence saying firstly that he was tried unjustly because his case was dealt with in a very short time. He then complained that he hadn't been given enough time to prepare his case, and hadn't been given an opportunity to look for a solicitor. He also said that he had said nothing in mitigation because he was never asked to say anything - which allegation is disproved by the court record. Towards the end of his grounds of appeal he said "I pleaded guilty in court as far as I am concerned. There is no medical examination in my case, my statement will reveal the basic facts."

It will be noted that nowhere did the applicant say that he was not guilty of the offence or that he had been induced to plead guilty against the facts.

His appeal was dismissed summarily.

The applicant now comes to court by way of an application for leave to apply for an order of certiorari to quash the conviction and sentence imposed by the magistrate's court. The application was supported by a statement of the grounds on which leave was sought as follows:-

a) That the said order was wrong in law.

b) That the facts as presented to the court did not disclose that the applicant had the necessary intention to commit the alleged offence the subject of the said Order.

c) That there was no or alternatively insufficient evidence and/or facts presented to support or justify the said conviction and hence the sentence.

d) That on the fact of the record the decision of the learned trial magistrate is erroneous in law and in fact.

There is no merit whatsoever in any of these grounds. The facts presented to the court did amply support the charge.

The applicant submitted an affidavit dated 6th June, 1980 alleging that he had known the complainant since her childhood, that he was innocent of the offence charged, that when he appeared in the court the interpreter merely asked if he had had sexual intercourse with the complainant, which he admitted. In fact he said that he had intercourse with her three times. The applicant then submitted a second affidavit dated 8th August, 1980 making allegations against the police. Firstly that the police refused to allow him to see his solicitor, secondly that the police told him that the matter was not serious and if he told the court he had had intercourse with the girl he would only be bound over. Thirdly that the police told him it was a trivial matter and he should not bother to engage a solicitor. He was told merely to admit he had had intercourse with the girl. Lastly he again stated that he had not been asked if he had anything to say in mitigation.

In view of the court record it is just not possible to accept any of the applicant's allegations and the fact that he has changed his ground at least three times makes it apparent that this application is an abuse of the process of this court, or something very close to it. It is just not possible for this court to infer that there was any irregularity or anything improper in the proceedings in the lower court, or that there was any doubt about the applicant's unequivocal plea of guilty to the charge and admission of the facts.

There are no grounds that would justify quashing the conviction and sentence and this application is dismissed.

LAUTOKA,
11th September, 1980

(sgd.) G. O. L. Dyke
JUDGE