

Particulars of Offence

MATEO MATAVURA on the 30th day of August 2011 at Waivaka Village in Namosi in the Central Division had carnal knowledge of **Ms. J.L.** without her consent.

2. After a full trial the three assessors unanimously opinioned that the accused is 'guilty' of the said charge of 'Rape'. It is now the time to deliver the judgment of the court.
3. Ms. J.L., the complainant claimed that she was forced by the accused to have sexual intercourse on 30th of August 2011. The accused in contrary said that he had sexual intercourse twice, with her full consent as he had a love affair with the complainant for over 2 years. That is how the 'consent' of the complainant became the decisive factor of this case.
4. Ms. J.L. said that when she was having 'grog' on the night of 30th August 2011 at her mother's sister's house, Josivini, a sister of the accused called her and told that the accused wishes to see her. Since Josivini was insisting Ms. J.L., she had gone with Josivini to the accused, who was waiting at the footpath and from there all three had proceeded to the village hall. Leaving Ms. J.L. and the accused there, Josivini had gone back. It is at that time, the accused had forced Ms. J.L. to have sexual intercourse. She was hit by the accused on her knee resulting her falling on the ground. She was gagged by one hand of the accused and thereafter he had made her undressed. Her neck was bitten and pressed. Her panty was torn when it was pulled down by the accused. She was then raped by the accused. Both Ms. J.L. and the accused then wore their clothes and gone away. It was almost after 2 months Ms. J.L.'s school teachers suspected of Ms. J.L.'s behavior in school and got it confirmed that she is pregnant. It was at that point, Ms. J.L. revealed that she was 'raped' by her 'uncle'.
5. When Ms. J.L. was asked by the teachers and questioned by the learned defence counsel in court as to why she did not tell this to anybody soon after the incident, she said that she was 'afraid' to do so as the parents would 'smack' her.

6. It is well established that our law expects a very high standard of proof in criminal cases compared to civil cases. The famous aphorism that 'it is better that ten guilty persons should escape than that one innocent should suffer' is always been insisted by the courts in the common law jurisdictions. This, though not enacted as a rule of law, been followed as a 'rule of prudence' as a wrong conviction would be much more injurious to the accused and to the society as opposed to a wrongful acquittal.
7. This court is mindful that in certain criminal cases, mostly in 'rape' trials, it is unfair to draw adverse inferences over the post event conduct of the witnesses. The 'conduct' cannot be mathematically enumerated or predicted to precision on specified lines as it varies from person to person. People react differently under different circumstances.
8. Nevertheless, the testimony of a witness in this type of a scenario, especially being the sole witnesses to confirm the whole prosecution version, though corroboration is not needed, has to be straight and reliable enough to inspire confidence. It is in that context, this court wishes to re-visit the evidence of the complainant to see whether or not her evidence crosses the threshold of 'reliability'.
9. Ms. J.L. admitted in cross examination that she had been drinking 'grog' for around 7 straight hours with several others at her aunt's place. She admitted that a line of houses, which were separated from several feet with each other, facing the village hall. It was further revealed that there are over 40 houses in the Waivaka village and all these houses are facing each other by either side of the church and the village hall. In answering to a question posed by the defence, Ms. J.L. admitted that one Apimeleki's house was just 4 meters away from the place where she was 'raped' and had she shouted or screamed people would have heard it easily. She confirmed that had she raised alarm she could draw the attention of the villagers, but then they would find out that she is having a relationship with the accused.

10. At one point Ms. J.L. said that she did not scream or shout as she wanted to keep the 'relationship' with the accused as a secret from the village. Again she said that she did not feel 'safe' in her own village, though surrounded by her own family, relatives and friends as instead of them protecting her, they would 'smack' her even she cried for help. While refusing that she had sexual intercourse behind Sisilia's house (village pre-school teacher's house) with the accused, Ms. J.L. said that she just had a 'chat' with the accused there and did not do anything more. She had to admit that she kept this 'sexual intercourse' as a 'secret' until the school teachers found her pregnant.
11. As stated in paragraph 8, there can be different approaches by different people when it comes to a 'crisis'. Had the complainant wanted to avoid the call of the accused through Josivini, she could have easily dropped the 'invitation' to see the accused as she was in her aunt's place. She was not pulled or dragged by Josivini to the accused. Then all three had gone to the village hall and Josivini had left them alone. Had Ms. J.L. did not like that conduct of Josivini she would have raised her concerns then and there. It is common sense, even to a girl of 15 years that a man calls you in the middle of the night to a secluded place for something more than a 'ordinary talk'. Thus, in the 1st place, Ms. J.L.'s decision to meet the accused alone at that time of the night behind the village hall is questionable.
12. Then comes the 'sexual intercourse'. It was admitted even by the complainant that had she raised alarm, the villagers could have easily heard. She has not done so. Ms. J.L.'s explanation for this 'conduct' is rather evasive. When she said that she did not want the villagers to know their 'relationship' with her alarms, that itself is an indication of her willing participation to the alleged sexual intercourse. On the other hand when she said that she did not feel 'safe' in her own village and that is why she kept quiet, this court has serious doubts about that. This is a girl who had 'grog' for 7 continuous hours with the fellow 'villagers' at her aunt's house and went looking for more 'grog' in the early hours of that night. It is hard to believe that she was 'unsafe' in her own community. Let us assume that she had her own good reasons for not to raise alarm during the sexual intercourse as the accused was in front of her telling or threatening not to do so. Then what did Ms. J.L. do after she 'escaped' from the accused?

13. With a pressed and bitten neck, a torn panty and most probably with a limping leg, Ms. J.L. would have complained to her aunt as to what happened to her. She would have rushed back to her house and informed her mother what the accused did to her. She could have complained about this even on the following morning. It is hard to believe her mother or the aunt would disbelieve her and 'smack her' after seeing their "daughter's" helpless condition. Instead, of taking any of these steps, Ms. J.L. waited for almost 2 months to tell 'something' about the accused until her teachers found her pregnant. This unexplained or unsatisfactorily explained 'belatedness' does not echo in favour of the complainant.
14. It is in this back drop this court prefers to accept the explanation of the accused. He said that though he knew that it was a 'taboo' to have a love affair with her niece, he had a love affair with her for two years and had sexual intercourse for two times, inclusive of 30th August 2011 night. All what this court has to assess is whether the alleged sexual intercourse on 30th August 2011 was consensual or not. It is rather unfortunate that the complainant got pregnant whilst she was schooling and got distracted from her studies. Yet this court has to be focused on the 'elements' of the offence of 'rape' and must be 'sure' that the complainant did not 'consent' to perform the sexual intercourse on the said night.
15. The conclusion of this court is that the previous and the subsequent conduct of the complainant do not indicate the absence of her 'consent' to have 'sexual intercourse' with the accused. Thus, this court does not agree with the learned prosecutor that the accused used his 'authority' to prevent the complainant from divulging this incident to anybody. No evidence transpired in court to say that the accused did continue to threaten the complainant not to disclose the events for 2 months. One cannot presume for his or her own advantage that their own village is 'unsafe' for them in a crisis like this. This court is not inclined to accept the complainant's version that she felt her own village 'unsafe' inclusive of her own parents, relatives and friends. Then the explanation of the accused, that they had a love affair and did not want anybody to know about their relationship due to social and cultural constraints, sounds much more plausible. This stance of defence gains more weight when the complainant admitted that even she did want to maintain the secrecy of what happened between them.

16. In the light of the 'conduct' of the complainant, especially the previous and subsequent 'conduct', it is hard to declare that the prosecution has proved their case beyond reasonable doubt or to the fullest satisfaction of court that Ms. J.L. did not 'consent' to have sexual intercourse in issue. This court is satisfied that the defence did manage to create a reasonable doubt in the case of the prosecution. That is a doubt which goes to the root of the prosecution case. Having been directed myself on my own Summing Up and the aforementioned reasons, I reject the opinions of the assessors and find the accused 'NOT GUILTY' to the charge of Rape.
17. That is the Judgment of court. Accused is acquitted accordingly.

Janaka Bandara
Judge

At Suva
Office of the Director of Prosecution for State
Office of the Legal Aid Commission for the Accused