

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 227 OF 2011

STATE

-v-

VIO CAKAU

Counsels : Ms. W. Elo for the State
Mr. R. Kumar for the Defence

Date of Trial : 20 October 2014 to 21 October 2014

Date of Summing Up : 22 October 2014

Date of Judgment : 22 October 2014

(Name of the victim is suppressed. She is referred to as TN)

JUDGMENT

1. The Accused is charged under following count:

Statement of Offence

Rape: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

VIO CAKAU on the 4th of December, 2011 at Lautoka in the Western Division, penetrated the vagina of TN with his penis, without her consent.

2. The three assessors unanimously found the accused Not Guilty of the above count but Guilty for Attempted Rape.

3. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
4. Considering the nature of the evidence before the court, I am convinced that the prosecution had proved the case beyond reasonable doubt in respect of the accused in respect of Attempted Rape.
5. Prosecution case was based on the evidence of the complainant. She gave evidence that the accused inserted his penis into vagina for 20 minutes. This was after two of them were drinking Beer. When complainant is shouting for help a police officer on foot patrol had come there. The police officer had seen the accused on the top of the victim. The complainant was lying down only wearing the top. The complainant had told the police officer that the accused was trying to have sex with her. There were no injuries noted in the medical examination. Therefore only evidence on penetration was from the complainant. The complainant admitted that she was drunk that night.
6. In my view, the assessor's verdicts were not perverse. It was open for them to reach such conclusions on the evidence.
7. In this case, the assessor's verdict is not binding on me. However, on careful assessment of the case, I am prepared to accept their unanimous Not Guilty verdict on the Charge and the unanimous Guilty verdict on the Attempted Rape.
8. I accept the assessor's verdict and I find that the prosecution has proven its case against the accused beyond reasonable doubt in respect of Attempted Rape.
9. I find the accused Guilty for Attempted rape contrary to Section 208 of the Crimes Decree No. 44 of 2009 and convict him.
10. This is the Judgment of the Court.



At Lautoka
22 October 2014


Sudharshana De Silva
JUDGE

Solicitors: Office of the Director of Public Prosecution
Office of the Legal aid Commission for the Accused