

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 211 OF 2013

BETWEEN:

STATE

PROSECUTION

AND:

KINIVUWAI DELAILAGI

ACCUSED PERSON

Counsel:

Ms. J. Prasad and Ms. D. Kumar for State
Mr. Tawake P for Accused

Dates of Hearing:

11th and 12th May 2015

Date of Summing Up:

13th May 2015

Date of Judgment:

13th May 2015

J U D G M E N T

1. After the hearing the three assessors unanimously opined that the accused is guilty of the offence of Rape as charged. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at the trial.

2. Complainant Taina Loana is the daughter of the de-factor partner of the accused. The complainant clearly testified as to how the accused raped her. Her evidence was that she came to Tacirua Heights home where her mother and the accused lived, to take her clothes. Accused had been alone at home. On the request of the accused she had massaged his back. The accused had then gone out saying that he was going to Cunningham. When she was sleeping the accused had come into the room and pushed her on to the bed and forcefully had sex with her.
3. It is an admitted fact that the accused requested the complainant to massage his back and that the accused was alone at home. Accused denying the allegation testified that after he got the massage he went to Cunningham and came back only after midnight.
4. Torika, the de-facto partner of the accused who is the mother of the complainant testified that when she came home that day by 5 – 6pm, the accused was there at home. She had questioned the accused as to where the complainant had gone.
5. I find that the evidence of the complainant was truthful and forthright. I also find that the evidence of the witness Torika was truthful when she said that the accused was at home around 5 – 6pm on the day in question.
6. I also find that the evidence of the accused denying the allegation was far from the truth and also the evidence that he came from Cunningham only after midnight was not truthful.
7. I have no reason to doubt the evidence of the complainant that the accused had intercourse with her forcefully without her consent. The complainant explained the delay in informing the mother about the incident.

8. When consider the circumstances, social background and also that the accused is the de-facto partner of the mother, the delay in complaining is justified.
9. Therefore I find that the prosecution has proved all the elements of the offence charged beyond reasonable doubt and the assessors' unanimous opinion was not perverse when they opined that the accused is guilty as charged.
10. Therefore I agree with the unanimous opinion of the assessors and find the accused guilty as charged and convict him accordingly.



Priyantha Fernando
Judge

At Suva

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for Accused