

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 213 OF 2011

BETWEEN : STATE

AND : WATEKINI NAIVAUKURA VUNISA

Counsel : Ms. S. Kiran for State
Ms. J. Nair for the Accused

Date of Hearing : 8th of December 2015

Date of Closing Submissions : 9th of December 2015

Date of Summing Up : 9th of December 2015

Date of Judgment : 10th of December 2015

JUDGMENT

1. The accused person is charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009. The particulars of the offence are that;

“Watekini Naivaukura Vunisa, on the 7th day of November 2011, at Lautoka in the Western Division, rape Emele Yalewavukivuki, in that the said Watekini Naivukula Vunisa used his penis to penetrate the vagina of the said Emele Yalewavukivuki without her consent”.

2. The accused person pleaded not guilty for this offence; hence the hearing of this action took place on 8th of December 2015. The prosecution called one witness during the course of the hearing. At the conclusion of the prosecution

case, the accused person gave evidence on oath but did not call any other witnesses for the defence. Subsequently, the learned counsel for the defence and the prosecution made their respective closing submissions. I then delivered my summing up to the assessors.

3. The three assessors returned with unanimous verdict of not guilty against the accused person. The assessors' verdict was not perverse. It was open for them to reach such a conclusion on the evidence presented during the hearing.
4. Having considered the evidence presented during the hearing, respective closing submissions of the prosecution and the defence, and the opinions of the assessors, I now proceed to pronounce my judgment as follows.

5. Sections 207 (1) and 207 (2) (a) states that;

"Any person who rapes another person commits an indictable offence.

A person rapes another person if-

- (a) *the person has carnal knowledge with or of the other person without the other person's consent,*


6. Accordingly, the main elements of the offence of rape are that;
 - i. The accused,
 - ii. Inserted his penis into the vagina of the victim,
 - iii. Without the consent of the victim, and
7. In view of the evidence adduced during the course of the hearing, it appears that the main contentious issue of this instant case is that whether the complainant consented for this alleged sexual intercourse.

8. A person consents only if he/she agrees by choice, and at the relevant time has the freedom and capacity to make that choice.
9. The prosecution and the defence presented conflicting versions of events, which took place in private between the complainant and the accused. The complainant stated in her evidence that the accused inserted into her vagina with his penis for that she did not consented. He pulled her towel and punched on her tights. The medical report tendered by the prosecution as an agreed document states that there was a small laceration on the hymen at 3 o'clock position but no bleeding or any discharge. The doctor has not found any bruises on the tights. The doctor in his professional opinion has stated that the injuries to hymen are consisted with some penetration and a penetration has occurred. The complainant was medically examined on the next day, that was 8th of November 2011.
10. Meanwhile, the accused stated that when he was putting his penis into her vagina, she told him that she has not had sexual intercourse with anyone before. He then stopped it and stood up. The complainant has not stated that the accused punched her on her tights in her statement made to the police.
11. The medical findings and the opinion of the doctor creates a doubt about the prosecution case. He has not found any bruises or marks on the tights of the complainant, though she alleged that the accused punched her on her tights. Moreover, the doctor's professional finding is that some penetration, but not any forceful penetration, which is more compatibly aligned with the version of the accused than of the complainant's version.
12. In view of the reasons discussed above, it is my opinion that the prosecution has failed to prove beyond reasonable doubt that the accused is guilty for this

offence. I accordingly, do not find any cogent reason to disagree with the unanimous not guilty verdict of the assessors.

13. I accordingly find the accused is not guilty for the offence of rape contrary to section 207(1) and 207 (2) (a) of the Crimes Decree and acquit from the same.
14. 30 day to appeal to the Fiji Court of Appeal.




R. D. R. ThusharaRajasinghe
Judge

At Lautoka

10th of December 2015

Solicitors : Office of the Director of Public Prosecutions
Ms. Jyotishana Nair