

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 47 OF 2011**

STATE

-v-

ANANAIASA SORO

Counsel : Mr. S. Babitu for the State  
Ms. V. Narara for Accused

Dates of Trial : 25th , 26th April 2016

Date of Summing Up : 28th April, 2016

Date of Judgment: 02<sup>nd</sup> May, 2016

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

**JUDGMENT**

[1] Accused was charged with following counts and tried before three assessors.

*Statement of Offence*

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

*Particulars of Offence*

ANANAIASA SORO on the 15th day of December 2010 at Lautoka in the Western Division had carnal knowledge of MB without her consent.

[2] Assessors unanimously found the accused guilty of Rape as charged.

- [3] I direct myself in accordance with my own Summing Up and review the evidence led in the trial. I pronounce my judgment as follows.
- [4] Identity of the accused was not disputed by the Defence. Complainant is accused's first cousin. Accused admitted that he had sexual intercourse with the Complainant on the 15<sup>th</sup> of December, 2010. Only issue to be solved is whether sexual intercourse took place with Complainant's consent. Prosecution says accused had sexual intercourse without Complainant's consent. Defence says otherwise.
- [5] Offence of Rape is one of the hardest offences to prosecute and to prove. Primarily this is because the offence is committed in private and there is often little or no corroborating evidence and it is usually one person's word against another. The onus is upon the Prosecution to prove beyond reasonable doubt that the accused is guilty; the accused is not required to prove his innocence. When it comes down to the word of one person against another, with no witnesses to support Complainant's evidence, making a case beyond reasonable doubt is a hard task indeed.
- [6] Faced with such difficulties, Prosecution, in this case, was able to convince the assessors that the Complainant did not consent to sexual intercourse.
- [7] The Prosecution based its case substantially on the evidence of the Complainant. Complainant's evidence is consistent and probable in the circumstances of this case. I am satisfied that the evidence she gave is truthful and believable. Prosecution discharged its burden and proved the charge beyond reasonable doubt.
- [8] There is no rule for me to look for corroboration of her evidence. However, I considered all the evidence led in the trial to see whether there are items of evidence to support her evidence.
- [9] According to the information, alleged incident took place on 15<sup>th</sup> December, 2010. Complainant did not complain the incident to anybody until her step mother, Mereia Marama, inquired on 19<sup>th</sup> February, 2011. Statement to police was given thereafter on 21<sup>st</sup> February, 2015. Contention of the Defence is that she did not complain because she had nothing to complain and everything happened with her consent. It has also been suggested on behalf of the accused that the fact that Complainant did not report what have happened to her as soon as possible makes it less likely that the complaint she eventually made was true.
- [10] Failure on her part to complain soon after the incident is not necessarily consistent with consensual sexual intercourse. Complainant gave two reasons for not complaining. Firstly, she was scared that she will be beaten up by her parents. When the matter came to light she was in fact beaten up by her step mother, thus proving her fear is legitimate. Secondly, she was also scared of accused's threat to commit suicide. Her fear is not about

his life but about ensuing trouble she would face in such an eventuality (suicide). She was fourteen years old and came from a broken family. Her step mother, Mereia Marama whom she ultimately reported is non-other than accused's mother-in-law who was sandwiched between interests of her own daughter and her step daughter. Mereia had no option but to report the matter to police due to pressure coming from all quarters, not only from Complainant's aunts but also from her father. Her aunties were swearing, teasing and forcing her to report the matter to police. If the aunties had not sworn at her and forced her, she would not have reported the matter to Police and her complaint would have died a 'natural death' as is the case in many domestic sexual violence cases. Under these circumstances, Complainant's reluctance to complain to her family is quite understandable.

- [11] In the light of the direction I gave in paragraph 94 and 95 of my summing up with regard to late complaints by victims of rape, assessors are quite justified in coming to the conclusion they arrived at.
- [12] Complainant was telling the story on the same lines without variations and material contradictions. She had not given a different version elsewhere. However, her assertion that she never visited accused's house after the incident seemed not consistent with other evidence led in the trial.
- [13] Police investigator, Asenaca Taufu who visited the crime scene which is accused's house in Tomuka in February 2011, said that Complainant was also 'living' with the accused. According to evidence of the accused, his wife, his mother-in-law and his son, Complainant never lived with the accused in Tomuka but only paid several visits to his place. According to accused's son, Complainant visited his place only twice after the incident and, on those two occasions, she did not meet the accused. His grandmother, Mereia Marama, who is also Complainant's stepmother, was also living with them. Given these inconsistencies, and possibility of her visiting her step mother, assessors were entitled to believe the complainant's overall version despite her telling she never visited accused's place after the incident.
- [14] Complainant did not scream or yell and alerted others in the house or neighborhood. She was sleeping in the sitting room with other children when the accused approached her. Her mouth was shut and warned not to shout. She did not yell or scream but only cried. It is not impossible in the circumstances of this case to rape a girl of 14 for 2-3 minutes without alerting others.
- [15] Absence of consent does not have to be in words or actions; it may be communicated in other ways. However, the law specifically provides that a person who does not offer actual physical resistance to sexual intercourse is not, by reason only of that fact, to be regarded as consenting to the sexual intercourse. (a person being sexually assaulted may


freeze and say and do nothing but this does not equal consent), one may query a claim of non-consent if a complainant did not verbalise it or physically resist.

- [16] Said that, I carefully considered the evidence of Complainant's step mother, Mereia Marama's evidence. She admitted in Court that her complaint to police was about Complainant being raped by her cousin Soro. However, in Court, she said that Complainant never told her that she was raped but only told that they were having sex or involved in a relationship. If the Complainant was only involved with the accused in a relationship, there is no reason for her to go and report the matter to police. Mereia's version in Court is contradictory to her earlier version. However, her evidence did not affect the credibility of the version of the Prosecution.
- [17] Mereia Marama had gone to police only because of the teasing and pressure coming from Complainant's aunt and father. Under these circumstances, it is quite natural for her to suppress the truth and give a testimony to save skin of the accused who is married to her daughter with seven children.
- [18] I watched Complainant giving evidence in court. She was straightforward and not evasive. Her demeanor was consistent with her honesty.
- [19] Version of the Defence is implausible and inconsistent. It failed to create any doubt in the Prosecution case.
- [20] Accused totally denied the fact that the sexual intercourse took place without Complainant's consent. According to him, Complainant was tempted to have sex with him; On the 8<sup>th</sup> December, he had to frustrate her. However, promise was given to fulfil her aspirations on the 15<sup>th</sup> during school vacation. It is to keep that promise she visited the accused on the 15<sup>th</sup> to engage him in sexual intercourse. According to Complainant's evidence, she had come to the accused's place to watch a movie. She slept in the sitting room with other children after the movie. If she visited him on that particular day as planned on the 8<sup>th</sup> to have sexual intercourse with him, Court can't comprehend why she slept in the sitting room with other children instead of going to his bedroom in the first place.
- [21] If that meeting on the 15<sup>th</sup> was a pre-planned event, Court also can't understand why the accused should invite the Complainant to his place to have sexual intercourse when, Eremasi, (the only adult present that night who had come to stay only for a week) was also present. Accused's evidence that he invited the Complainant to his room to have sexual intercourse when Eremasi was also sleeping in the same bedroom is highly improbable and unbelievable.
- [22] Defence Counsel cross examined the Complainant on the basis that she came to the accused's room to massage the accused who was suffering from a stomachache. Accused

in contrast never mentioned about a stomachache or massage and insisted instead that she came to the room for the very purpose they had planned, that is to have sexual intercourse.

- [23] Accused had never mentioned to police or his Counsel that Eremasi was home that night in his room. He had not told police about the so called relationship with her and the December 8<sup>th</sup> conversation about the prior arrangement to have sexual intercourse on the 15<sup>th</sup>. If the accused mentioned the name of Eremasi, then the police could have verified the accused's version and, Eremasi would have been the best independent witness on earth for accused to call. Accused failed to do either of them.
- [24] Accused's son and his wife were called to support the Defence case. They are not independent witnesses. They had a real interest in seeing that accused is out of trouble. Furthermore, accused's wife was really jealous of the Complainant who posed a real threat to her marriage with the accused. His son had been coached by the accused to tell the 'truth' in Court. Accused told him to tell the name of Eremasi and also told him to tell Court that his father came and woke Complainant up to take her to the room. While the case was going on, his father told him what had happened in the year 2010. He said that he clearly remembered the day it happened because a police party had visited his house on the following day. However, Police visited his place way back in February 2011.
- [25] I watched accused and witnesses called on his behalf giving evidence in court. They were evasive and not straightforward. They were inconsistent in their evidence. Defence version failed to establish a reasonable doubt in the prosecution case.
- [26] Prosecution discharged its burden and proved each element of the count beyond reasonable doubt.
- [27] I accept the unanimous opinion of assessors which was available in evidence led in trial. I find the accused guilty of Rape as charged and convict him accordingly.
- [28] That is the judgment of this Court.



  
**Aruna Aluthge**  
**Judge**

At Lautoka  
02<sup>nd</sup> May, 2016

**Solicitors: Office of the Director of Public Prosecution for State  
Office of the Legal Aid Commission for Accused**