

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 77 OF 2014

STATE

V

TOMASI YABAKIONO

Counsel: Ms. A. Vavadakua for State
Mr. A. Paka (L.A.C.) for accused

Dates of Trial : 2, 3, 4 May 2016
Date of Judgment : 4 May 2016

JUDGMENT

[1] The accused was charged with the following counts:

FIRST COUNT

Statement of Offence:

INDECENTLY ANNOYING ANY PERSON: Contrary to section 213 (1) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMASI YABAKIONO on 12th March 2013 at Taveuni in the Northern Division with intent to insult the modesty of **MARITINA YAVALA** uttered words to the effect that she should have an affair, intending that such words be heard by the said **MARITINA YAVALA**.

SECOND COUNT

Statement of Offence:

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMASI YABAKIONO between 1st of March 2013 to the 31st March 2013 at Taveuni in the Northern Division unlawfully and indecently assaulted **MARITINA YAVALA**.

THIRD COUNT

Statement of Offence:

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMASI YABAKIONO on 15th March 2013 at Taveuni in the Northern Division had carnal knowledge with **MARITINA YAVALA** without the said **MARITINA YAVALA's** consent.

FOURTH COUNT

Statement of Offence:

INDECENTLY ANNOYING ANY PERSON: Contrary to section 213 (1) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMASI YABAKIONO between 1st of April 2013 to the 30th of April 2013 at Taveuni in the Northern Division with intent to insult the modesty of **NAOMI DIBABI** uttered words to the effect that she should have an affair with him, intending that such words be heard by the said **NAOMI DIBABI**.

FIFTH COUNT

Statement of Offence:

INDECENTLY ANNOYING ANY PERSON: Contrary to section 213 (1) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

TOMASI YABAKIONO between 1st of August 2013 to the 31st August 2013 at Taveuni in the Northern Division with intent to insult the modesty of **VIKATORIA MARAMA** uttered words to the effect that she should have sexual intercourse with him, intending that such words be heard by the said **VIKATORIA MARAMA**.

- [2] After trial in this court, three assessors returned with unanimous opinions of not guilty on each count.
- [3] The evidence for the first three counts came from Maritina Yavala (PW1) in which she stated that in March 2013 while serving as a Special Police Constable at the Taveuni Police Station, she was subjected to the authoritarian command of the accused who was the time the officer-in-charge (OC) and her boss. She spoke of a strict working environment and long hours but in particular the sexual harassment that she was subjected to.
- [3] On the 12th March 2013, the accused called her to his office and told her that her husband was having an affair, so why shouldn't she have one too. On another occasion in March, while she was in his office delivering a fax, he tried unsuccessfully to kiss her.
- [4] Thirdly and most seriously he raped her in a Police Vehicle late one night after an operation that they had attended.
- [5] The witness PW1 appeared to me to be truthful and forthright in her evidence and was obviously then and even now overwhelmed by their respective differences in status: he the boss and she the very junior officer. The major part of her evidence was with regard to the rape, evidence that was unshaken in cross-examination.
- [6] The defence made much of the fact that when Senior Officers (including Com Pol) had visited the station in June, she didn't report it, but I find that for a young junior officer to report a crime perpetrated by her superior to his superiors would be

unthinkable in Fijian culture. She said she was frightened, embarrassed and fearful for her job.

- [7] I believed her evidence with regard to the rape but I have reservations about the kissing incident (Count 2). She admits that she wasn't actually kissed (nor does she have to be) and it could well be that she misconstrued the actions of the accused.
- [8] The witness Naomi (PW2) who gave evidence relating to the fourth count was similarly clear and confident. She too spoke of the authoritarian regime presided over by the accused as OC. On calling her into his office, he said words to the effect that he wanted to have an affair with her. She said she was shocked and "freaked out".
- [9] In relation to the fifth count, the witness Marama (PW3) said that the accused pestered with phone calls making lewd and insulting references to wanting to eat her private parts and for her to "try the older man". Such references made in the iTaukei dialect were explained to me in open Court to be commonly known phrases with definite sexual connotations.
- [10] I find that any such words would insult the modesty of a young female subordinate, even though she be a volunteer.
- [11] The accused gave evidence which was evasive and bombastic. For the large part his evidence was self-serving. In answering each question he evaded the answer and seized the opportunity to sing his own praises and how well he was regarded by the then Com Pol. He had to admit however that is presently suspended from service and he had once before been suspended.

[12] His evasiveness and arrogance detracted from any value his evidence might have had, evidence which was in any event distinctly lacking in substance. Apart from his self-serving evidence he simply denied raping or insulting.

[13] The accused said nothing to make me doubt the persuasiveness of the prosecution evidence.

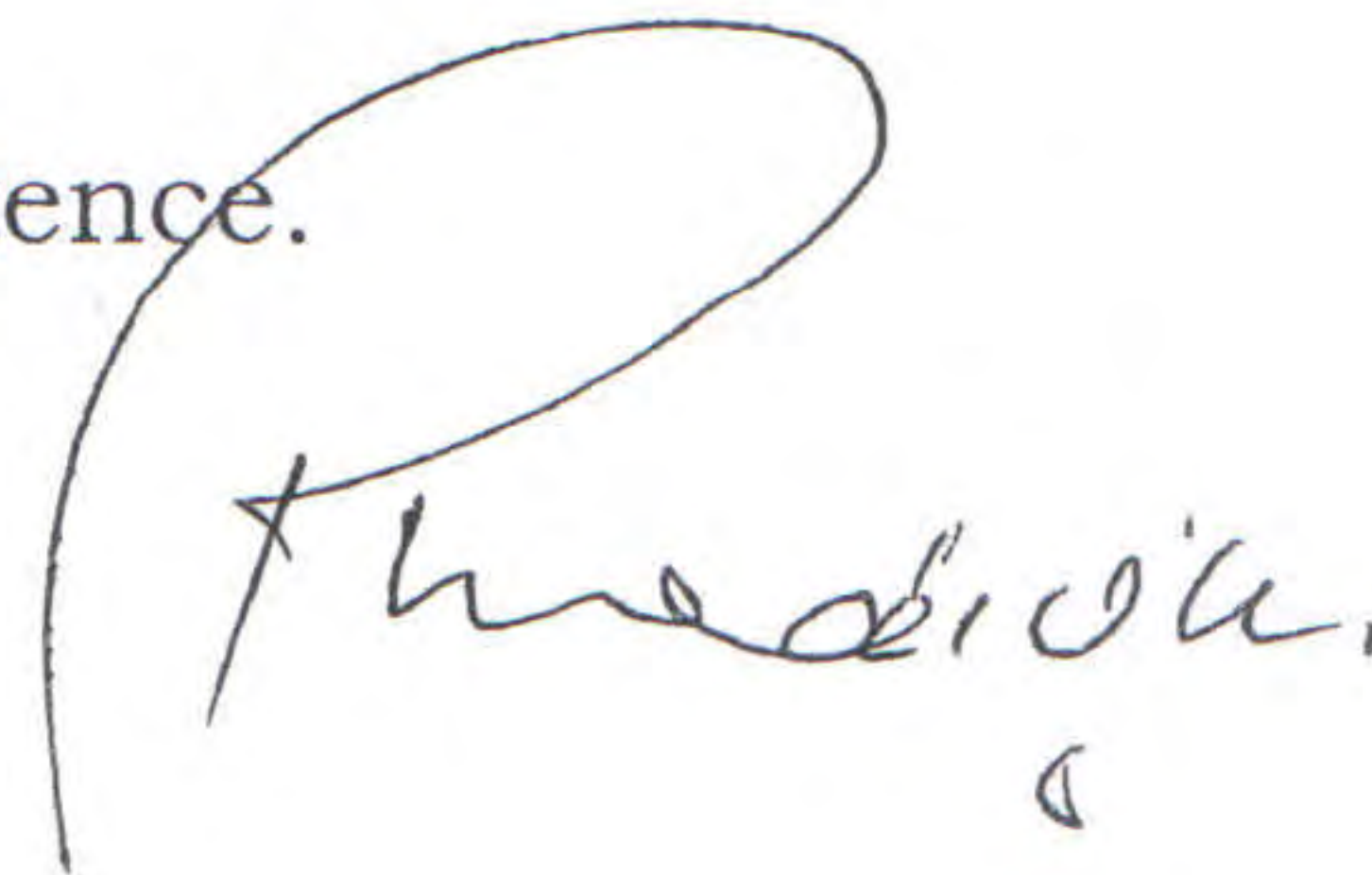
[14] I find that he presided over the station with the same arrogance and force that he displayed in the witness box; and that there existed at the time a climate of sexual harassment of junior female officers.

[15] In the premises, I find that the case in respect of the first, third, fourth and fifth counts has been proved beyond reasonable doubt and in rejecting the opinions of the assessors I find the accused guilty of each of those counts and he is convicted accordingly.

[16] In respect of the second count I accept the opinions of the assessors and find the accused not guilty and he is acquitted on that count.

[17] That is the Judgment of the Court.

[18] I now call for mitigation of sentence.



P.K. Madigan
Judge

At Labasa

4 May 2016