

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION
CRIMINAL CASE NO: HAC 42 OF 2015

STATE

V

1. SOVITA SEVAKASIGA
2. PENIJAMINI TAWAKE

Counsel : Ms. A. Vavadakua for State
Ms. S. Dunn for 1st Accused
Mr. A. Paka for 2nd Accused

Hearings : 15 - 18 August, 2016
Summing Up : 19 August, 2016
Judgment : 19 August 2016

JUDGMENT

- [1] The two Accused, Sovita Sevakasiga and Penijamini Tawake, were charged for two counts, contrary to section 207(1),(2)(a) and further two counts contrary to 2(c) of the Crimes Decree No. 44 of 2009 for committing Rape on Silvia Maca.
- [2] They pleaded not guilty to the four charges and the ensuing trial lasted for 4 days. The complainant and Mumeu Caucau have given evidence for the prosecution while both accused offered evidence. The 2nd accused also called Lesley Taylor in support of his case.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the two accused guilty to the four counts of Rape.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the 25 year old complainant. Since both accused have admitted vaginal and oral penetration, only trial issue was whether the complainant consented or not. According to her, the accused are her cousins. After a drinking party at the 1st accused's house where the 2nd accused and several other males took part, she was sent to the nearby shop by the 1st accused. When she returned she found that others have already left and only the two accused were there. The village generator was switched off by then, and sensing danger she hid herself under the house, but she was surprised by the 2nd accused.
- [6] The complainant then ran along a track until she reached the main road. The two accused were also there and she was caught by the 1st accused and brought her back to his house where she was raped by both men taking turns. They penetrated her vagina and mouth. She told the 1st accused that she would report and he responded by telling her that he would do something. She felt weak and feared for her life.
- [7] The accused in their evidence stated that it was a consensual sexual act and the 2nd accused claimed he has an on-going relationship with the complainant during which they had consensual sex three times. The witness called by the 2nd accused said in evidence when he peeped through the half open window, he saw the complainant having sex with the accused willingly.
- [8] The three assessors found the evidence of prosecution as truthful and reliable, as they unanimously found both the accused guilty to the counts of Rape. They were directed in the summing up to evaluate the probabilities of the version of events as presented by the parties. The only element of lack of consent, which had to be proved by the prosecution through the complainant, was also highlighted to them. The three assessors have obviously rejected the claim of consensual sexual intercourse by the two accused. It was a question of believing whom.
- [9] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I concur with the opinion of the assessors and there is no cogent ground to override their determination of whom to believe.
- [10] Considering the nature of all the evidence before the Court, it is my considered opinion that the prosecution has proved it's the case beyond reasonable doubt by

adducing truthful and reliable evidence satisfying all elements of the offences with which the two accused are charged.

[11] In the circumstances, I convict the two accused, Sovita Sevakasiga and Penijamini Tawake, to the two counts of vaginal Rape. I also find them guilty to the two counts of Oral Rape.

[12] This is the Judgment of the Court.



ACHALA WENGAPPULI

JUDGE



At Labasa

19 August, 2016

Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Office of the Legal Aid Commission, Labasa