

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 103 of 2016

[CRIMINAL JURISDICTION]

STATE

V

PANAPASA GANITA

Counsel : Ms. K. Semisi for State
Accused in Person

Dates of Hearing : 26 – 28 October 2016

Date of Summing up: 28 October 2016

Date of Judgment : 01 November 2016

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as EK)

JUDGMENT

1. The accused was charged for the following offences;

FIRST COUNT

Statement of offence

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

Particulars of offence

PANAPASA GANITA on the 19th February 2016 at Nasinu in the Central Division had carnal knowledge of EK without her consent.

SECOND COUNT

Statement of offence

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

Particulars of offence

PANAPASA GANITA on the 26th February 2016 at Nasinu in the Central Division had carnal knowledge of EK without her consent.

THIRD COUNT

Statement of offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of offence

PANAPASA GANITA between the 1st day of November 2015 and 30th day of November 2015 at Nasinu in the Central Division unlawfully and indecently assaulted EK by fondling her breast.

FOURTH COUNT

Statement of offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of offence

PANAPASA GANITA between the 1st day of January 2016 and 18th February 2016 at Nasinu in the Central Division unlawfully and indecently assaulted EK by fondling her vagina.

FIFTH COUNT

Representative Count

Statement of offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) and (2) of the Crimes Decree No. 44 of 2009.

Particulars of offence

PANAPASA GANITA between the 1st day of January 2016 and 18th January 2016 at Nasinu in the Central Division unlawfully and indecently assaulted EK by licking her vagina.

SIXTH COUNT

Statement of offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of offence

PANAPASA GANITA on 26th February 2016 at Nasinu in the Central Division unlawfully and indecently assaulted EK by sucking her breast.

SEVENTH COUNT

Statement of offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) and (2) of the Crimes Decree No. 44 of 2009.

Particulars of offence

PANAPASA GANITA on 26th February 2016 at Nasinu in the Central Division unlawfully and indecently assaulted EK by licking her vagina.

2. After the close of case for the prosecution, this court held that there is no case to answer on counts 3, 4, 5 and 7. Accordingly the accused was put to his defence only in respect of counts 1, 2, and 6.
3. The assessors have returned with a unanimous opinion that the accused is guilty of counts 1, 2 and 6.
4. I direct myself in accordance with the summing up delivered to the assessors on 28 October 2016 and the evidence adduced during the trial.

5. The accused does not dispute that he penetrated the complainant's vagina with his penis in relation to the first two counts and he does not dispute that he sucked the complainant's breast in relation to the sixth count. The issues to be decided in respect of each count are, whether the complainant did not consent and whether the accused knew that the complainant was not consenting or whether the accused was reckless as to whether or not the complainant was consenting.

6. The evidence of the complainant was that she did not consent for the accused to penetrate her vagina on 19/02/16 and 26/02/16, and for the accused to lick her breast on 26/02/16. The complainant was 19 years old at the time of the three alleged offences. She was brought to Suva from Lau by the accused to babysit his children. It was the first time for the complainant to come to Suva. The accused was in a position of authority and trust over the complainant. The evidence revealed that the complainant asked money from the accused and the accused wanted the complainant to have sex with him first, for him to give her money. The complainant clearly said that she did not consent for the accused who was her uncle to have sexual intercourse with her on the two occasions.

7. The consent relevant to the offence of rape should be consent freely and voluntarily given. Consent obtained by the exercise of authority is not considered as consent freely and voluntarily given. Mere submission does not constitute consent.

8. Since October 2015, the accused assumed the role of the father figure to the complainant. He was in fact the complainant's father's brother. The accused knew that the complainant is his niece who is almost half of his age. He knew that he had authority over the complainant because of his role and also his ability to grant the complainant's request for money. Therefore, it can be reasonably inferred that the accused knew or believed that the complainant was

not freely and voluntarily consenting for him to have sexual intercourse with her.

9. It is manifest that the three assessors who represented the society in this trial have concluded that the complainant did not freely and voluntarily consent for the accused to have sexual intercourse with the complainant on 19/02/16 and on 26/02/16 and for the accused to suck the complainant's breast on 26/02/16. The assessors have rejected the accused's evidence that the accused believed that the complainant consented for him to have sexual intercourse with her. They have concluded that the accused knew or believed that the complainant did not freely and voluntarily consent or that the accused was reckless as to whether or not the complainant consented on the two occasions. I do not find any cogent reason to disagree with the unanimous opinion of the assessors.
10. Therefore, I concur with the opinion of the assessors that the accused is guilty of the first, second and the sixth counts.
11. The accused is acquitted on counts three, four, five and seven as I have concluded that there was no case to answer on those charges.
12. I find the accused guilty of the first, second and the sixth counts as charged and convict him accordingly.



Vinsent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : In Person