

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 14 of 2016

STATE

v

TAUSIA FUATA FABIANO

Counselors: Ms A. Vavadakua for the State
Mr. I. Rakaria with Miss M. Kumar
(L.A.C.) for the accused

Date of Summing Up : 19 April 2017

Date of Judgment : 20 April 2017

JUDGMENT

1. The accused was charged with the following offence:

Statement of Offence

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

Particulars of Offence

TAUSIA FUATA FABIANO, on the 12th day of March 2016 at
Namawa Estste, Vatudamu, Cakaudrove, in the Northern

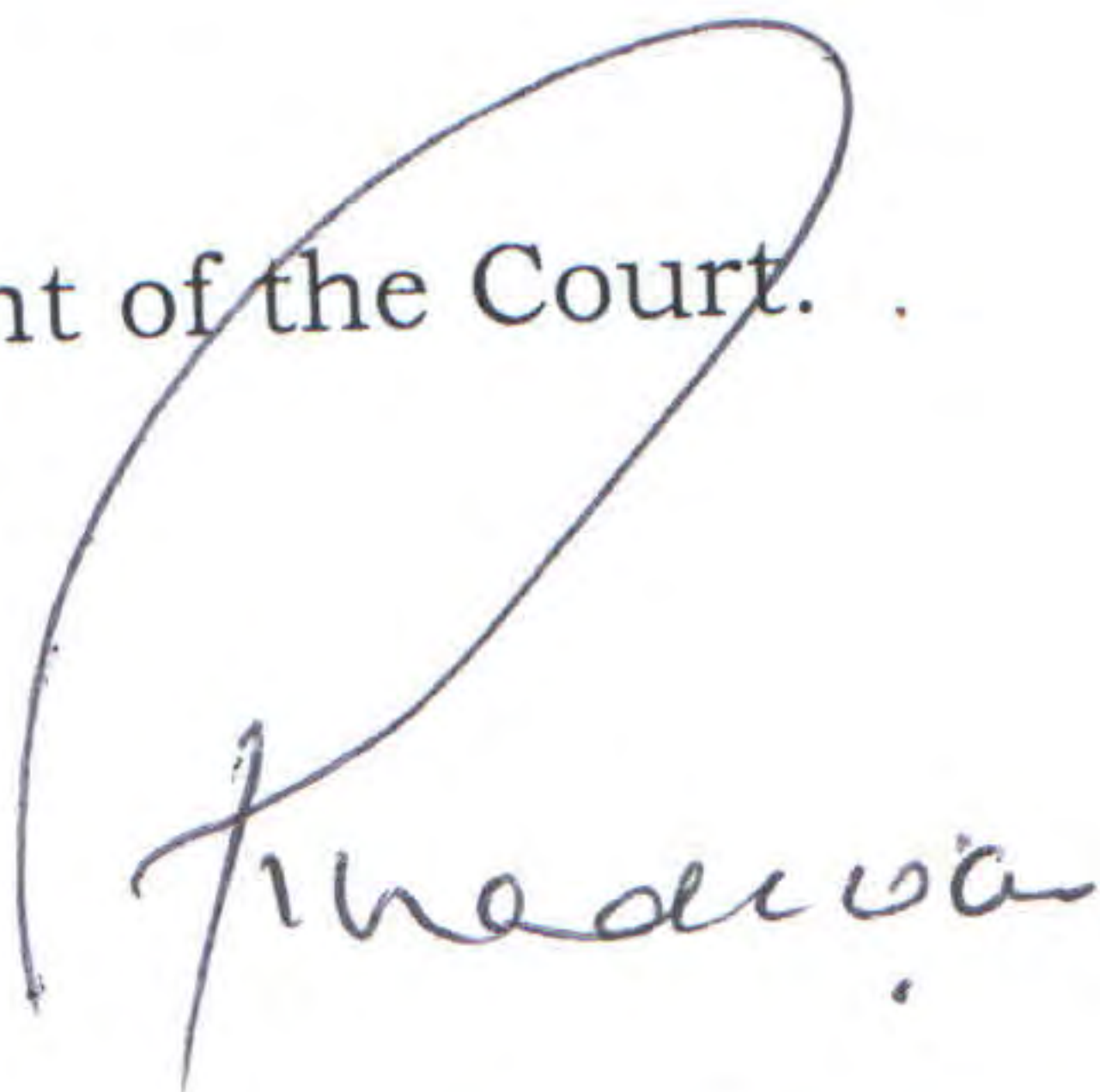
Division, had carnal knowledge of (name suppressed) without her consent.

2. After trial in this Court the three assessors returned with a majority opinion of guilty.
3. The thrust of the prosecution case came from the alleged victim of the rape, a 27 year old woman who being mentally handicapped had, according to her mother, a similar mental age to that of her 7 year old grand daughter.
4. As a result the eliciting of evidence from the victim witness was extremely difficult.
5. Her mother had given evidence before her and the mother told the Court of the difficulties her victim daughter had faced, initially in her primary education and subsequently in her interaction in a social milieu within the family. She occupies herself mainly in household chores but can be moody and very willful.
6. It was very apparent when hearing the lady victim's evidence that she was mentally challenged. Her mother sat with her during her evidence to comfort her. She was able to answer simple questions in chief about her life and in particular about this sexual episode in her life; however when confronted in cross-examination with more complex questions and propositions, she was unable to cope. She would answer a question put to her both in the affirmative and the negative, and at one stage in response to quick fire questions from Defence Counsel she appeared to agree with everything he put to her; propositions that would not make any sense to agree with.

7. She told the Court of the day in question when she had been left alone with her first cousin, the accused, and how he had called her into a bedroom of the house, stripped her of her clothing and had proceeded to have sexual intercourse with her.
8. The actual act of the intercourse had been agreed by counsel before trial, so the only issue at trial was whether this lady victim was consenting or not.
9. The lady was adamant in chief that she didn't want the accused to "do this bad thing". She didn't tell the full story to her mother when she returned because she was weak and frightened; however she told an aunt and the village crime committee some ten days later leading to the report of the crime to the authorities.
10. The accused gave evidence in his defence and consistently with the answers given in his caution interview, he told the Court that when they had been left alone the lady had come to him and insisted that they have sex. She led him to the bedroom, lay on the bed and exposed herself to him inviting him to penetrate her which he did. He told the Court that during the act the lady was enjoying it and telling him so.
11. The two diametrically opposed versions of this incident obviously caused the assessors some difficulty in that they were deliberating for an unusually lengthy time, yet they returned with a majority opinion of guilty of rape, clearly believing the victim but not the accused.
12. Despite the unusual manner in which the lady victim delivered her evidence, the Court was impressed with her forthright insistence that she was not a willing party to this incident. Her

seeming reversal of that position in cross-examination was not brought about by skillful questioning but clearly by misunderstanding and confusion.

13. With that confidence in the prosecution case in mind, the Court turns to the evidence of the accused to determine if his version might cause the Court to doubt the prosecution evidence.
14. The accused's version of events is unconvincing and implausible. He says that he resisted the lady's strenuous invitations to treat for 20 minutes before succumbing to her advances. This is a 19 year old man who on his own evidence had never had sex before. A young man's libido and sexual urges could never resist such an offer. He admits in his evidence that he was aware of the lady's mental deficiency and had been most of his life, having lived near or in the family. That being so, the Court cannot accept his version of events to be true. He has said nothing to cast doubt on the prosecution case.
15. In the premises therefore the Court accepts the majority opinion of the assessors and finds the accused guilty of rape and he is convicted of the offence.
16. That is the Judgment of the Court.



P. K. Madigan
Judge



At Labasa
20 April 2017