

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 78 OF 2013

STATE

-v-

KOLAIA RALULU

Counsel : Mr. A. Dutt for the State
Ms. K. Vulimainadave for Accused

Date of Summing Up: 13th April, 2017

Date of Judgment: 26th April, 2017

JUDGMENT

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

Statement of Offence

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

Particulars of Offence

KOLAIA RALULU on the 13th day of April 2013 at Rarawai, Ba in the Western Division, inserted his penis into the vagina of **LOSANA NALOLO** without her consent.

- [2] Assessors unanimously found the accused not guilty of Rape as charged.
- [3] I direct myself in accordance with my own Summing Up and review evidence led in the trial.
- [4] Having disagreed with the opinion of Assessors, I pronounce my judgment as follows.
- [5] Identity of the accused was not in dispute in this case. Accused admitted that he was in a romantic relationship with the Complainant from 2012 to 2013. He also admitted that he penetrated the Complainant on the 13th April, 2013.
- [6] Prosecution says that the sexual intercourse took place without Complainant's consent. Accused denies the allegation and says that he was in a romantic relationship with the Complainant for two years and that the alleged sexual intercourse took place with her full consent.
- [7] Prosecution called five witnesses and based its case substantially on evidence of the Complainant. I am satisfied that Complainant's evidence is truthful and

believable. Prosecution discharged its burden and proved the charge beyond reasonable doubt.

- [8] Complainant was 17 years old and schooling at the time of the alleged rape. She did not deny that she was in a girlfriend-boyfriend relationship since 2012 till this allegation was brought up against the Accused. She also admitted having kissed Kolaia in 2012 when she met with the accused in a carnival.
- [9] The Assessors were called upon to decide whether the Complainant had given consent to the alleged sexual intercourse on the crucial day (13th April 2013) notwithstanding this relationship.
- [10] On this day, Complainant met with the Accused at the Ba bus stand. He told her to meet him before going home. Despite that request, she got into a bus and went to her uncle's daughter Deborah Losana's house at Field 28. After packing clothes, she was walking towards her home when she saw Accused following her. Then he invited her to go to his sister's place.
- [11] Complainant told him that she was going home. He offered to drop her home. She agreed and accompanied him to his sister's place in opposite direction on a gravel road surrounded by cane fields. It was getting dark. Then he told her to have some rest near a cane field. She refused and wanted to get back home. When she was turning back to go home he held her hand and took her to the cane field and pushed her down. He took off his ¾ trousers. Then he started to take off her clothes. She was trying to stop him in vain.

- [12] Complainant was wearing a skirt, an underwear and a top. Accused took off only her underwear and put his penis into her vagina. After putting his penis into her vagina he was biting her neck. She was in pain and trying to push him but she failed. She did not agree to what he was doing. He stopped it when 'water' was coming out. Then he wore his clothes, told her to go home and went away while she was still lying down on the ground.
- [13] Complainant got up, wore her clothes with blood stains and started to walk towards her home. She was crying. She saw a vehicle coming on the road. It was Jakir Hussein (PW2), a known person. Jakir stopped the vehicle and told her to get in. He asked her, 'why you crying'? Then she told the whole story about what had happened. Jakir took her to the police station. As they were proceeding towards the police station, she saw Accused on the road. She showed the Accused to Jakir. Without stopping the vehicle, Jakir took her to the Ba Police Station. Her statement was recorded. She was then taken to the Ba Mission Hospital for a medical examination. A female doctor examined her. She told the doctor what had happened.
- [14] Complainant is consistent in her evidence. There is no material contradiction between her previous statement to police and her evidence in Court. Evidence of other Prosecution witnesses is consistent with her evidence.
- [15] Prosecution relies on 'recent complaint evidence' to prove consistency of Complainant. Complainant relayed the incident to the first person she saw, Jakir, soon after the incident and went with him to the police station and made a prompt complaint within hours. Jakir, who was an independent witness, came

and gave evidence to say that he received such a complaint. A medical examination was done in the same night. Complainant relayed the same story to the doctor. Her complaint, promptly made, boosted the credibility and consistency of her version.

- [16] Prosecution also relies on doctor's evidence. Doctor's expert evidence was consistent with a forceful sexual intercourse. Doctor noted bruises on Complainant's neck and two lacerations at the base of her vaginal opening (introitus). Doctor opined that the lacerations had been caused by a forced penetration of a 'blunt object' (she confirmed that an erected penis is a blunt object). She ruled out the possibility of such lacerations being caused by a consensual sexual intercourse. Having considered all other evidence led in the trial, I accept doctor's opinion which was supported by logical explanations.
- [17] Prosecution also relies on 'distress evidence'. Witness Jakir confirmed that Complainant was crying soon after the incident; her cloths were dirty and had leaves on them.
- [18] There was no apparent motive on the part of the Complainant to fabricate such a serious allegation against her boyfriend if no injustice was caused to the Complainant. The suggestion put to the Complainant by the Defence Counsel in this regard was not consistent with evidence of the Accused. It was put to the Complainant by the Defence Counsel that, being late in that evening; she was prompted to make up this complaint due to fear of her mother. Complainant's mother gave evidence and said that she was not a 'strict mother'. Accused on the other hand took a completely different view as regards the motive. He was

putting the blame on Jakir. Accused said that Jakir was behind the scene in framing him.

- [19] There is no reason why Jakir should trap the Accused or make up an allegation against the Accused. He had come to the scene accidentally. There is no acceptable evidence that Jakir was communicating with the Complainant on a mobile phone or that he was there on a pre-arranged scheme. After the alleged incident, Accused and his family had even approached Jakir in an effort to reconcile with Complainant. Jakir had accompanied the Accused and his family to Complainant's house with a Yaqona plant. If Jakir had wanted to put the Accused in trouble, he wouldn't have accompanied Accused's family to Complainant's house for the purpose of reconciliation.
- [20] Jakir's conduct is not improbable when his vehicle was driven straight to the police station without talking to the Accused. He wanted to ensure the arrest of the Accused. He rushed to the police station and came back with a policeman to where the Accused was last seen.
- [21] I watched Complainant giving evidence in Court. She was straightforward and not evasive. Her demeanor was consistent with her honesty.
- [22] Version of the Defence is not consistent and believable. Accused maintained that Complainant was his girlfriend and the sexual intercourse took place with her full consent. He adduced evidence to describe the events that led to the alleged sexual activity to show that it happened with her agreement. However, the version of the Defence is not appealing to me.

- [23] Defence Counsel cross-examined the Complainant on the basis that she (Complainant) was also wearing a tight in addition to the panty. Accused admitted that his Counsel's cross examination was based on his instructions. Quite surprisingly, Accused in his evidence missed that important piece of evidence. He never mentioned about a tight although he was precise in every detail when he described sequence of events that took place in that evening. Accused said that he forgot to mention about the tight. His forgetfulness is unbelievably unnatural given his sharp memory.
- [24] I watched Accused giving evidence in Court. It appeared that he was giving evidence according to coached instructions to rebut crucial points against him and to dispute the version of the Prosecution. For example, in an effort to explain the finding of the medical report, he said he made 'love bites' on Complainant's neck on her own request.
- [25] Accused and his family had approached Complainant in a failed attempt to reconcile. Accused's conduct after the incident is consistent with his guilty mind.
- [26] Version of the Defence is inconsistent and implausible. It failed to create any doubt in the Prosecution case.
- [27] Prosecution proved the charge beyond reasonable doubt. I find the Accused guilty of Rape as charged and convict him accordingly.

[28] That is the judgment of this Court.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

At Lautoka

26th April, 2017

Solicitors: Office of the Director of Public Prosecution for State

Office of the Legal Aid Commission for Accused