

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 69 of 2014

STATE

V

MACIU LIBU

Counsel : Ms. R. Uce for the State.
: Accused in person.

Dates of Hearing : 4, 5 September, 2017
Closing Speeches : 6 September, 2017
Date of Summing Up : 6 September, 2017
Date of Judgment : 8 September, 2017

JUDGMENT

[1] The Director of Public Prosecutions charged the accused by filing the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MACIU LIBU on the 3rd of May, 2014 at Lautoka in the Western Division, had carnal knowledge of **SEINI BATIUVI**, without her consent.

- [2] The three assessors had returned with unanimous opinion that the accused was not guilty for the count of rape as charged.
- [3] I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
- [4] The prosecution called three (3) witnesses while the accused opted to remain silent and not call any witnesses.
- [5] The complainant Seini Batiuvi informed the court on 3rd May, 2014 between 7.30pm and 8pm whilst walking from the roundabout of the South Seas Club towards the Value City Shop in the heart of Lautoka City and as she was about to go past the corner of the shop she was grabbed by her t-shirt collar and pulled to the side of the Value City Shop into a dark passage.
- [6] When the witness was pulled inside the passage she heard the accused saying in Itaukei language "*you are my wife*" when the witness replied she was not his wife she received a punch on her stomach. As the witness sat on the ground she received two more punches on the lower part of her stomach after this the accused started to undress her by taking off her clothes. At this time the witness was lying down on the ground.
- [7] The accused removed his t-shirt pulled his trousers down to his knees and came on top of the witness and inserted his penis into her vagina for around 10 minutes.

- [8] There were no lights in the area the only light was from South Seas Club about 3 to 4 meters away. The light at the end of the passage was quite far away.
- [9] The witness was able to see the accused who had dreadlocks hair, in his hand he had a shoe shine brush and a box used for shoe shining. He was wearing a black t-shirt, black long trousers, a cap and was of dark complexion a bit tall but not a very big person.
- [10] When the accused came on top of her she could see his face at this time she saw a security officer about 6 meters away to whom she called out. The security officer looked towards her. At this time the accused left her.
- [11] The witness ran towards the security officer by taking her clothes with her seeking help. When she reached the security officer she wore her clothes and informed the security officer of what had happened to her by this time this person had left the scene.
- [12] When her clothes were been removed the witness did not do anything because she was weak and her stomach was paining and she could not also move herself because he had locked both her legs using his legs. The witness did not scream because of pain in the stomach and she was experiencing shortness of breath so her voice was not loud enough.
- [13] The matter was reported to the Police thereafter she was medically examined at the Hospital.
- [14] The accused did not dispute the fact that he was not at the scene taking this into account there was no need for any Turnbull directions to be given to the assessors.
- [15] The second prosecution witness was Retired Inspector Sainiana Lewaicei on 22 May, 2014 the witness was instructed to conduct an identification

parade. The identification parade was conducted in the police station premises in the bure.

- [16] In the identification parade there were nine men chosen by the Investigating Officer of the same features as the accused. The accused and the victim were kept separately. The accused was escorted to the parade by another Police Officer the witness spoke to the accused before the parade who preferred to stand between the 4th and 5th person.
- [17] The victim was escorted by a female Police Officer to where the parade was conducted. The witness informed the victim that she has to walk into the lineup if she recognizes the person who had raped her she may point or touch the suspect.
- [18] The victim had pointed towards the accused. After this the victim was escorted back to the CID office. The other men in the identification parade were of the same features as the accused with dreadlocks hair of similar height and dark complexion.
- [19] The final witness for the prosecution was Dr. Agnes Dunn, who had examined the complainant on 3rd May, 2014.
- [20] The Doctor explained there was no obvious bruises on the abdomen on the outer part of the body based on the history of the patient that she was punched on her stomach. As for the vagina been jaggered according to the Doctor it appeared there was some force used on the vaginal wall.
- [21] In the professional opinion of the Doctor the complainant had suffered acute injury meaning it happened a few hours ago and that the history related by the patient was consistent with the Doctor's medical findings. The vaginal injury could have been caused by a penis.

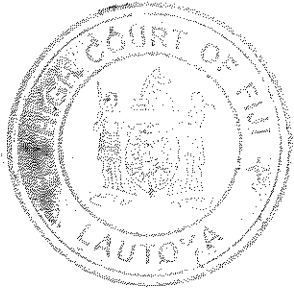
- [22] The accused has denied the allegation of rape. He takes up the position that he did not penetrate the vagina of the complainant as alleged. On the night of the alleged offending he had met the complainant and that they held hands and walked towards Asha Bhai Building where he told the complainant to have sex with him and he will give her \$20.00. At the alleged scene the accused asked the complainant to sit on top of him but she didn't she got hold of her clothes and ran away.
- [23] I accept the evidence of the complainant as truthful and reliable. I have no doubts in my mind that the complainant told the truth in court. The complainant was able to recall what had happened to her three years ago. The complainant was forthright in her evidence I am satisfied that the complainant's demeanour was consistent with her honesty.
- [24] I also accept the evidence of the other two prosecution's witnesses as truthful and reliable as well. The identification parade was properly conducted by the Retired Police Inspector Sainiana Lewaicei which led to the identification of the accused.
- [25] The Doctor in her professional opinion stated that the complainant had suffered acute injury which had happened a few hours ago and the history related by the complainant was consistent with the medical findings of the Doctor. The vaginal injury could have been caused by a penis.
- [26] I reject the defence of the accused as unreliable and untruthful. The accused did not dispute grabbing the complainant by the collar of her t-shirt uttering the words "*you are my wife*" or punching the complainant. If the accused had met the complainant and had together walked to the scene of the alleged incident then there was no need for the accused to do the above. I am satisfied beyond reasonable doubt that it was the accused who on 3rd of May, 2014 had unlawful carnal knowledge of the complainant Seini Batiuvi without her consent.

[27] I also accept that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.

[28] In view of the above and for the reasons mentioned I reject the unanimous opinion of the assessors.

[29] I find the accused guilty as charged for one count of rape and I convict him accordingly.

[30] This is the Judgment of the Court.



A handwritten signature in black ink, appearing to read "Sunil Sharma".

Sunil Sharma

Judge

At Lautoka

8 September, 2017

Solicitors

Office of the Director Public Prosecutions for the State.

Accused in person.