

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 25 of 2017

[CRIMINAL JURISDICTION]

STATE

V

MANIYAU MOW

Counsel : Ms. J. Fatiaki and S. Sharma for State
Ms. S. Hazelman and Mr. E. Radio for Accused

Hearing on : 21st – 23rd February 2018

Summing up on : 23rd February 2018

Judgment on : 26th February 2018

(The name of the complainant is suppressed. The complainant will be referred to as "LM".)

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

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

Particulars of Offence


MANIYAU MOW, on the 13th day of January, 2017 at Nasinu in the Central Division, had carnal knowledge of **LM**, by inserting his penis into the anus of **LM** without her consent.

2. The assessors have returned with the unanimous opinion that the accused is not guilty of the above offence and also of the alternative offence of defilement they were directed to consider in my summing up.
3. I direct myself in accordance with the summing up delivered to the assessors on 23rd February 2018 and the evidence adduced during the trial.
4. The complainant and the doctor who medically examined her gave evidence for the prosecution and the accused gave evidence in his defence.
5. The complainant's evidence was that she tried to shout, but the accused covered her mouth with his hand. She said the accused tried to insert his penis inside her vagina but when he did not succeed he inserted his penis inside her anus. Given her evidence, she was lying down on the mattress facing upwards when the accused tried to insert his penis inside her vagina. However, she said that the accused was lying on her back when he inserted his penis inside her anus. When the prosecutor asked her what position she was in when the accused penetrated her anus, her answer was she was facing upwards.
6. In my view, the complainant tried to avoid telling this court how she changed her position in order to make it possible for the accused to penetrate her anus with his penis. The complainant also said in her evidence that she cannot recall the time she changed her clothes when she was inside the room whereas she admitted telling the police that she changed into a dress before she lay on the mattress. The accused's evidence was that the complainant changed into a 'thin' dress before she lay on the mattress that night.
7. Considering all the evidence led in this case, I am satisfied beyond reasonable doubt that the accused did penetrate the complainant's anus with his penis. However, given the inconsistencies and the improbabilities noted in the evidence given by the complainant I have a doubt whether the accused

penetrated the complainant's anus without her consent. Therefore, I find that the evidence does not establish the offence of rape as charged, beyond reasonable doubt.

8. According to the evidence of the complainant her date of birth is 12/02/01. Accordingly, she was 15 years and 11 months old when the alleged incident took place. Considering all the evidence led in this case, I find that the accused had reasonable cause to believe, and did in fact believe, that the complainant was of or above the age of 16 years. Therefore, I find that the alternative offence of defilement is also not established beyond reasonable doubt.
9. In the circumstances, I agree with the unanimous opinion of the assessors. I find the accused not guilty of the offence of rape as charged and I also find the accused not guilty of the offence of defilement.
10. The accused is acquitted accordingly.




Vincent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused: Legal Aid Commission, Suva.