

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 183 of 2017

STATE

V

PAULA NAVUKULA

Counsel : Ms. Shirley Tivao for the State
Ms. Namrata Mishra with Ms. Olive Grace for the Accused

Dates of Trial : 26-28 November 2018

Summing Up : 29 November 2018

Judgment : 3 December 2018

JUDGMENT

[1] The accused, Paula Navukula, was charged with the following offence:

COUNT ONE

Statement of Offence

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

Particulars of Offence

PAULA NAVUKULA, on the 29th day of May 2017, at Wainimakutu, Namosi, in the Central Division, had carnal knowledge of **SALANIETA VAKALOLOMA SAUNİYAKA** by inserting his penis into the vagina of **SALANIETA VAKALOLOMA SAUNİYAKA** without her consent.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the accused not guilty of the count of Rape.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] The Assessors were directed that in order to prove the charge of Rape, the prosecution must establish beyond reasonable doubt that;
 - (i) The accused;
 - (ii) On the specified day (in this case the 29 May 2017);
 - (iii) At Wainimakutu, Namosi, in the Central Division;
 - (iv) Inserted his penis into the vagina of Salanieta Vakaloloma Sauniyaka/penetrated the vagina of Salanieta Vakaloloma Sauniyaka with his penis;
 - (v) Without the consent of the complainant; and
 - (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.
- [7] Each of the above individual elements were further elaborated upon in my summing up.

[8] In support of their case, the prosecution called the complainant, Salanieta Vakaloloma Sauniyaka, and Doctor Anaseini Maisema. The prosecution also tendered the Medical Examination Report of the complainant as Prosecution Exhibit PE1.

[9] The accused opted to remain silent.

[10] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Final Admitted Facts*" without placing necessary evidence to prove them:

1. Salanieta Vakaloloma Sauniyaka, 25 years old, is the complainant in this matter.
2. The complainant resides at Wainimakutu, Namosi.
3. Paula Navukula, 21 years old, resides at Nasoqo Village, Naitasiri and is also known as Tamana.
4. On the 29th of May 2017, Paula Navukula was at Wainimakutu.
5. Paula Navukula had gone to the complainant's home to see her brother namely Joji.
6. The complainant's brother was not at home.
7. The complainant asked Paula Navukula if she could take the phone to Suva and would return it to him.
8. Paula Navukula denied.
9. The complainant picked the phone and Paula Navukula pushed her right hand.
10. The next morning, Ratu Alipate Ratini called both the complainant and Paula Navukula and questioned them about the allegation against him.
11. The complainant was medically examined on 30 May 2017, at Navua Hospital.

[11] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" without placing necessary evidence to prove them, they must therefore, treat the above facts as proved beyond reasonable doubt.

- [12] Based on the said agreed facts the identity of the accused, the date of incident (29 May 2017), and the place of incident (Wainimakutu, Namosi), are proved beyond reasonable doubt.
- [13] However, the prosecution must prove that the accused penetrated the vagina of Salanieta Vakaloloma Sauniyaka with his penis; and that the accused penetrated the vagina of Salanieta Vakaloloma Sauniyaka with his penis without her consent; and the accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.
- [14] The accused is totally denying that the incident of Rape ever took place.
- [15] The position taken up by the defence is that the accused had gone to the complainant's house to meet her brother Joji. Since Joji was not at home at the time, he had waited for Joji to come home.
- [16] The accused's position is that he had gone to the bed (the mattress) where the complainant was lying on to get his phone from her. Since the complainant had refused to return his phone, he had to push her in an attempt to get his phone back. Only after he pushed the complainant, was he able to get his phone.
- [17] It is clear that the Assessors have not believed the evidence of the prosecution as truthful and reliable, as they have unanimously found the accused not guilty on the charge of Rape.
- [18] In my view, the Assessors' opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinions of the Assessors.
- [19] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt.
- [20] In the circumstances, I find the accused not guilty of the charge of Rape and accordingly I acquit him.




Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT SUVA

Dated this 03rd Day of December 2018

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