

IN THE HIGH COURT OF FIJI AT LABASA
[CRIMINAL JURISDICTION]

HAC 55 OF 2016

BETWEEN : **THE STATE**

AND : **NILESH SAIGAL**

Counsels : **Mr. R. Kumar for State**
Mr. A. Sen for Accused

Hearing : **03 April, 2018**

Date of Ruling: **04 April, 2018**

RULING
(Section 231(1) of the Criminal Procedure Act)

1. The accused is charged with one count of Rape, contrary to Section 207 (1) (2) (a) of the Crimes Act. The particulars of the offence are that;

“Nilesh Saigal, between the 15th day of October 2016 and the 16th day of October 2016, at Savusavu in the Northern Division, had carnal knowledge of Susana Catherine, without her consent,

2. The accused pleaded not guilty, hence the matter proceeded to hearing. The hearing commenced on the 3rd of April 2018. The prosecution adduced the evidence of the Complainant. At the end of the prosecution's case, the learned counsel for the defence made an application pursuant to Section 231 (1) of the Criminal Procedure Act, stating that there is no evidence to establish that the accused committed this offence as charged. The learned counsel for the defence submitted that there is no evidence to establish that the accused had

sexual intercourse with the Complainant without her consent in the night of 15th of October 2016. The learned counsel for the prosecution in his reply submissions conceded that there is no evidence given by the Complainant confirming or identifying that it was the accused who had sexual intercourse with her in that night.

3. Section 231 (1) of the Criminal Procedure Act states that;

“When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty, if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence”.

4. The Complainant in her evidence said that she met a person called Nilu in the night of 15th of October 2016 when she went to the Savusavu carnival. It was the first time she met that person as she had never met him before. She came to know his name as Nilu. They met near the Hot Spring Hotel. He asked her to go with him to the back of the hotel. He forcefully took her there. There was no light and it was dark. She did not see his face. The Complainant further said that when he was lying on top of her, she did not see his face. She had turned her head and was looking other side. The Complainant said that she did not want to see his face. The Complainant further said that she never saw or met that person after that incident. The Complainant then said that she could not be able to recognise or identify that person, if she sees him again.

5. In view of the evidence given by the Complainant, she has not properly and clearly saw the person who took her and raped her beside the Hot Spring Hotel. The Complainant says that she could not be able to identify him, if she sees him again. Accordingly, there is no evidence before this court that it was the accused who met the Complainant at the Hot Spring Hotel in that night. There is not evidence to establish that it was the accused who took the Complainant and raped her beside the Hot Spring Hotel.

6. Accordingly, I find that there is no evidence adduced by the Prosecution to establish that the accused committed this offence. Therefore, I find that the accused is not guilty for this offence as charged and acquit him accordingly.

7. Thirty (30) days to appeal to the Fiji Court of Appeal.



R.T. Rajasinghe

JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Labasa.**
Solicitor for the Accused : **Messrs Maqbool & Company, Labasa.**