

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 011 of 2018

STATE

v.

AB

Counsel: Ms. L. Bogitini for State
Ms. S. Prakash for Accused

Date of Hearing: 04th June 2018

Date of Summing Up: 06th June 2018

Date of Judgment: 06th June 2018

JUDGMENT

1. The names of the Complainant and the accused are suppressed.
2. The accused is being charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offence are that:

"AB on the 1st day of January, 2018, at Nasinu, in the Central Division, penetrated the anus of CB, with his penis, without the consent of the said CB"

3. The hearing was commenced and concluded on the 4th of June 2018. The prosecution presented the evidence of three witnesses, including the Complainant. The accused decided to exercise his right to remain in silence, hence, did not give evidence.

Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up:

4. The three assessors in their unanimous opinion found the accused guilty for this offence.
5. Having carefully considered the evidence adduced during the hearing, the respective closing addresses of the parties, the summing up and the unanimous opinion of the three assessors, I now proceed to pronounce my judgment as follows.
6. The prosecution alleges that the accused came into the room while the Complainant was sleeping, and pulled him down to the floor. The accused then penetrated into the anus of the Complainant with his penis without the consent of the Complainant.
7. The defence suggested to the Complainant that it was not the accused who actually committed this crime to the Complainant. The defence suggested that the Complainant was mistaken in recognising the accused as the perpetrator to this crime.
8. The case against the accused depends upon the correctness of the recognition made by the Complainant. In order to determine whether the Complainant had properly and correctly recognised the accused as the perpetrator of this crime, the court needs to consider the circumstance in which the Complainant made this recognition.
9. According to the evidence given by the Complainant, he has seen the accused in the sitting-room, looking for his bag, while the Complainant was walking into the room to sleep. The Complainant knew the accused as the accused is related to him as his uncle. The Complainant then explained in the evidence that the light which was at the laundry area shined directly into the room. He had no obstacles when he saw that the accused was standing in front of him. Moreover, the Complainant said that he recognised the voice of the accused when he threatened him not to tell anyone else.
10. The Complainant denied the proposition made by the learned counsel for the defence, suggesting that he was mistaken in recognising the accused as the perpetrator. The

Complainant was straight and coherent in giving his evidence. I accordingly accept his evidence as credible and truth. Hence, I am satisfied that it was the accused who came into the room while the Complainant was sleeping and penetrated into the anus of the Complainant with his penis.

11. In view of these findings, I do not find any cogent reasons to disregard the unanimous opinion of guilty given by the three assessors.
12. I accordingly, find the prosecution has proven beyond reasonable doubt that the accused committed this crime as charged.
13. In conclusion, I hold that the accused guilty for this offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
06th June 2018

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