

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

High Court Criminal Case No. HAC 55 of 2016

BETWEEN : STATE

AND : GABIRIELI RAVALAWA

Counsel : Mr Seruvatu for the State
Ms Volau and Ms Raman for the Accused

Dates of Hearing : 03 & 04 October 2019

Closing Speeches : 04 October 2019

Date of Summing up: 04 October 2019

Date of Judgment : 21 October 2019

JUDGMENT

1. The Accused is indicted for one count of rape contrary to Section 207(1) and (2)(b) of the Crimes Act. The particulars of the offence are as follows;

“Gabiriel Ravalawa on the 19th day of February, 2016 at Nadi in the Western Division, penetrated the vagina of Paulini Elesi Ratu with his finger without her consent.”

2. The Accused pleaded not guilty on 02 November 2016. The trial commenced on 03 October 2019. Only the complainant was called by the prosecution and after the closure of the prosecution case the Accused gave evidence. At the end of the trial I summed up the case to the assessors. The assessors returned with a unanimous opinion of not guilty.
3. Having directed myself with the summing up I will now review the evidence of this case to pronounce the judgment.
4. The only contested issues in this matter were consent and penetration. The Accused admitted that on 19 February 2016 he approached the complainant to have sexual intercourse. The Accused argued that he did not insert his finger into the complainant's vagina and he only touched the outer part of her vagina. Nevertheless, he maintained that it was done with the consent of the complainant.
5. According to the evidence of the complainant she had been lying down on a bed when the Accused approached her. She said that while she was lying on the bed the Accused came and sat beside her. She had been lying on her side, facing the Accused. She said then the Accused lied on top of her and kissed her on her mouth. She said that she did not do anything when he kissed her. She admitted that her hands were free, but she did not push him away when he kissed her. The Accused had then touched her breasts. The complainant had been wearing $\frac{3}{4}$ Lee pants and according to her evidence the Accused had forcefully put his hand inside her pants.
6. However, the complainant admitted that she was 5 months pregnant at that time and it was tight in her crotch area. She said that her Lee pants had a button and a zip. She admitted that she did not do anything when the Accused put his hand inside her pants. She said that she pulled his hand and pushed him away only when he inserted his finger into her vagina. The complainant said

that the Accused then left her room. According to the prosecution evidence it was after about 7 days that she had complained it to her parents.

7. The defence argued that her pants were so tight, and it was not possible to put the hand inside the pants without the complainant's cooperation. The Accused said that the complainant unzipped her pants and that was when he started touching the outer part of her vagina. She also admitted that she did not resist when the Accused put his hand inside her pants as follows, under cross examination;

Q: Now when he was trying to force his hand into your pants, you did not at anytime push him, that's when he forced his hands into your pants. Inside your pants isn't it?

A: No

8. The complainant had been lying on her side and the Accused had been on top of her when the alleged acts were done. The complainant said that the Accused used his right hand and the defence pointed out that it is not possible to put the hand inside in that position as described by the complainant. The defence further highlighted that the complainant's version is not probable as it is difficult to insert the hand inside her pants given the tightness of her pants in her waist and crotch area.
9. The explanation given by the complainant for the late complaint was not very convincing. She said that she did not complain as she was scared that her father will beat her up. However, it appears that she had already been five months pregnant at that time and it is not clear as to why her father would beat her when she complains about another person who allegedly raped her. She also did not say anything about what made her complain after 7 days. I am of the view that the late complain has diminished the credibility of her evidence.
10. I have observed the demeanour of the complainant. She was not very forthright and did not look confident when she gave evidence in court. She admitted in

court that she did not scream or call out for help. She said that she did not run away as she was pregnant. There was no evidence which suggests that the complainant was under duress or that the Accused threatened her. I am not satisfied that the complainant's evidence is reliable.

11. All in all, a reasonable doubt is created in respect of the issue of consent. I am not satisfied that the prosecution proved beyond reasonable doubt that the Accused did the alleged act without the consent of the complainant.
12. It appears that the assessors have declined to accept the evidence of the complainant. I am of the view that it is justifiable for the assessors to reach their unanimous conclusion due to the reasons discussed above.
13. In the circumstances I decide that the Prosecution failed to prove the offence of rape beyond reasonable doubt. I concur with the unanimous opinion of the assessors.
14. Accordingly, I find the Accused not guilty and he is acquitted of the offence of rape.



Rangajeewa Wimalasena
Acting Judge

At Lautoka
21 October 2019

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission