

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

High Court Criminal Case No. HAC 94 of 2014

BETWEEN : STATE

AND : ALIPATE LUMELUME

Counsel : Ms Uce for the State
Ms Bilivalu for the Accused

Dates of Hearing : 02 & 03 October 2019

Closing Speeches : 03 October 2019

Date of Summing up: 03 October 2019

Date of Judgment : 16 October 2019

JUDGMENT

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

“Alipate Lumelume between the 1st day of February 2011 and 28th day of February 2011 at Nadi in the Western Division penetrated the vagina of Ivamere Nadori with his penis without the consent of the said Ivamere Nadroi.”

2. Only the complainant was called by the prosecution to give evidence and after the prosecution case was closed, the Accused opted to remain silent. When the case was set down for the summing up, one of the assessors did not appear in

Court. Therefore, with the consent of both parties I summed up the case to the two assessors, who were present in Court.

3. After the summing up the two assessors returned with a unanimous opinion that the Accused is guilty of rape.
4. Having directed myself in accordance with the summing up I will now review the evidence in this case to pronounce my judgment.
5. The prosecution case was that the Accused inserted his penis into the vagina of the complainant in two occasions between 01 February 2011 and 28 February 2011 without her consent. The Accused is indicted for one representative count in respect of both incidents. The Accused did not dispute that he had sexual intercourse with the complainant. The only contention of the defence was that it was consensual sexual intercourse.
6. I have considered the evidence given by the complainant. First, she gave evidence regarding an incident where the Accused hugged her prior to the two alleged incidents of rape. She said that she complained about it to her in laws. Also, she explained the reason as to why she initially did not complain about the Accused to her husband. The complainant gave evidence in respect of two incidents where the Accused had inserted his penis into her vagina without her consent. The complainant also gave evidence that she complained about the second incident of alleged rape to her husband. She said that her husband felt sorry for the Accused and did not want to complain to the police. According to the complainant, then they have decided not to stay with her in laws anymore.
7. Finally, the complainant reported about the incidents on 12 April 2012 when the Accused allegedly approached her once again when she was sleeping. She explained as to why she had to finally report to the Police.

8. Although the complainant was cross examined at length on the issue of consent, she repeatedly denied that she had consensual sexual intercourse with the Accused. The defence highlighted a few inconsistencies in her evidence. However, I am of the view that those inconsistencies are not material and they do not render the complainant's evidence unreliable.
9. I am satisfied that the complainant's evidence is credible and truthful. Although the alleged incidents had taken place 8 years ago the complainant's evidence was clear and consistent. I have observed her demeanor. I have no reason to disbelieve the complainant and I am of the view that she is a credible and a reliable witness. Further I am of the view that her explanations with regard to the delay in complaining to the Police are probable and reasonable. I accept the evidence of the complainant.
10. I am satisfied that the prosecution proved beyond reasonable doubt that the Accused inserted his penis into the complainant's vagina without her consent in two occasions. I have no reasons to disagree with the assessors. Therefore, I concur with the unanimous opinion of the two assessors.
11. In the circumstances I find the Accused guilty of the representative count of rape and I convict him accordingly.



Rangajeeva Wimalasena
Acting Judge

At Lautoka
16 October 2019

Solicitors

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

Solicitors for the Accused: Legal Aid Commission