

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

High Court Criminal Case No. HAC 153 of 2017

BETWEEN : STATE

AND : LEMEKI VULI

Counsel : Mr Seruvatu for the State
Mr Raikanikoda for the Accused

Date of Hearing : 13 September 2019

Closing Speeches : 13 September 2019

Date of Summing up: 13 September 2019

Date of Judgment : 16 September 2019

JUDGMENT

1. The Accused is indicted for one count of rape Contrary to Section 207 (1) and (2) (b) of the Crimes Act 44 of 2009. The particulars of the offence are as follows;

“Lemeki Vuli on the 31st day of July 2017, at Nadi in the Western Division, penetrated the vagina of Emily Likubuta, with his fingers without her consent.”

2. After the summing up the assessors returned with a majority opinion that the Accused is guilty to the offence of rape.
3. Having directed myself in accordance with the summing up, I concur with the majority opinion of the assessors. I will now give the reasons for my judgement.
4. I will first consider whether the prosecution proved the identity of the Accused beyond reasonable doubt. According to the admitted facts the parties have agreed that the Accused in this case is Lemeki Vuli. Further it is admitted that the Accused was in a de facto relationship with the complainant's sister. The complainant gave evidence that the only man who was at home at the time of the alleged offence was the Accused. She said that she turned when someone was touching her vagina and then she saw it was the Accused. She had then pushed him away and had stood up to go to the toilet. During the cross examination she was asked as to how she recognized the Accused if she was drunk. The complainant said that the Accused's hand was still inside her panty and he was still trying to kiss her when she turned. Under cross examination she admitted that the lights were off. However, she reiterated that she saw him when she turned. She denied that she assumed it was him and the complainant repeatedly confirmed that she saw him.
5. According to the complainant's evidence the Accused had been just beside her trying to kiss her mouth. Although she was cross examined on the issue of identification, the complainant convincingly said that she recognized him when she turned. I have carefully considered the evidence given by the complainant and I am satisfied that the complainant had positively identified the person who was fondling with her vagina as the Accused in this case.
6. The complainant gave evidence that when she was asleep, she felt that someone was touching her vagina. The complainant explained that the Accused used his entire palm to touch her vagina. She further said that he touched her inner vagina using his fingers. During the cross examination the complainant said

that she was wearing Lee pants with an elastic. She said that her pants did not have a zip or buttons. She said that the pants that she was wearing was not that tight.

7. The complainant said that she did not consent the Accused to insert his fingers into her vagina. According to her she was asleep when the Accused had started fondling with her vagina. She had turned when she realized that someone was inserting the fingers into her vagina. She had pushed the Accused away when she saw him. She said that she was scared, shocked and could not believe that something like that would happen to her.
8. Under cross examination it was put to the complainant that the complainant's sister started living with her former husband soon after the Accused was remanded for this case. However, the complainant reiterated that it was after several months that her sister started living with her former husband.
9. The complainant's evidence was consistent, and she was not evasive when giving evidence. I have observed her demeanour. I am satisfied that she is a truthful and a credible witness. Although she was cross examined at length, her credibility could not be challenged.
10. I have considered the evidence given by the Accused as well. He denied that he inserted his fingers into the vagina of the complainant. The Accused said that the complainant and her sister made up the allegation to frame him. He said that due to the issues he had with the complainant's sister he was planning to move out of the house. He said that the complainant and her sister framed him for the complainant's sister to re-unite with her former husband. However, the Accused did not deny that he brought rum and cola for the complainant and her sister, who was his de facto partner. He confirmed that they all were drinking alcohol that night. He further confirmed that he slept with his de facto partner in the sitting room. According to the Accused's evidence there had not been any dispute between the parties on that night.

11. The Accused Initially said that he did not know why the complainant went and slept in his room. But later he admitted under cross examination that his de facto partner told the complainant to go to that room to sleep.
12. Although the Accused said that the complainant made a false allegation against him, the evidence does not suggest a motive to frame him. I am of the view that the evidence given by the Accused is not probable and it does not create any doubt in the prosecution case. I am not inclined to accept the version of the defence. It appears that the majority of the assessors have preferred to believe the complainant and their opinion is justifiable.
13. I am satisfied that the prosecution has proved beyond reasonable doubt that the Accused inserted his fingers into the vagina of the complainant without her consent.
14. In the circumstances I find the Accused guilty to the offence of rape and convict him accordingly.



A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the printed name.

Rangajeeva Wimalasena
Acting Judge

Solicitors

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

Solicitors for the Accused: Raikanikoda Lawyers