

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

High Court Criminal Case No. HAC 417 of 2018

BETWEEN : STATE

AND : ILISAVANI CAVA

Counsel : Ms. U. Tamanikaiyaroi for the State
Ms. R. Nabainivalu and S. Hazelman for the Accused

Date of Hearing : 18 & 19 February 2020

Closing Speeches : 19 February 2020

Date of Summing up: 20 February 2020

Date of Judgment : 21 February 2020

(The name of the complainant is suppressed and will be referred to as "SD")

JUDGEMNT

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;

“Ilisavani Cava on the 31st day of October 2018, at Nasinu in the Central Division, penetrated the vagina of SD, with his fingers without her consent.”

2. The Prosecution called two witnesses and after the closure of the Prosecution case the accused gave evidence. No other witnesses were called by the Defence.
3. In my summing up the assessors were given directions on the elements of the offence, how to evaluate evidence and on other general considerations. Subsequently, in the unanimous opinion of the assessors you have been found guilty of the offence of rape.
4. Having directed myself in accordance with the summing up I will now pronounce my judgment.
5. The Prosecution case is that on 31 October 2018 the accused inserted three fingers into the complainant’s vagina without her consent. The accused admitted that he slid his hand inside the complainant’s shorts. However, he denied that he inserted his fingers into the complainant’s vagina. It was his version that he took out his hand when the complainant resisted.
6. The Prosecution submitted medical evidence to buttress the complainant’s evidence. The medical report confirms that there were fresh lacerations at 6 o’ clock and 8 o’ clock positions in her hymen. Further it confirms that there had been a superficial abrasion at fossa navicularis.
7. According to the evidence of the complainant she had complained to the Police straight after the incident. The Accused too confirmed that he was arrested by the Police when he was on his way home after meeting the complainant. Her prompt complaint to the Police immediately after the incident and the medical evidence invariably adds credibility to the complainant’s version.

8. I have observed the demeanor of the complainant. Further I have considered the evidence given by her. I am satisfied that she was forthright, and her evidence is truthful and reliable.
9. On the other hand, the evidence given by the accused was not probable and reliable. I am not inclined to accept the evidence of the accused.
10. It appears that the assessors have refused to accept the evidence of the accused and have found the evidence of the Prosecution to be truthful and reliable. I do not have any reason to disagree with the unanimous opinion of the assessors. Their finding is justifiable, and I concur with their unanimous opinion.
11. In the circumstances I decide that the Prosecution proved beyond reasonable doubt that the accused on 31 October 2018 penetrated the vagina of the complainant with his fingers without her consent.
12. I find the accused guilty of the offence of rape and convict him accordingly.



At Suva

21 February 2020

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

Solicitors for the Accused: Office of the Legal Aid Commission