

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 211 of 2017

STATE

V

SAMISONI BALEIMATUKU a.k.a SAMISONI BALEIYAROI

Counsel : Ms. R. Uce for the State.
: Ms. V. Diroiroi for the Accused.

Dates of Hearing : 14, 15, 16, 19, 20 October, 2020
Closing Speeches : 21 October, 2020
Date of Summing Up : 22 October, 2020
Date of Judgment : 26 October, 2020

JUDGMENT

(The name of the complainant is suppressed she will be referred to as "AD")

1. The Director of Public Prosecutions charged the accused by filing the following information:

FIRST COUNT

(Representative Count)

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) and (2) of the Crimes Act 2009.

Particulars of Offence

SAMISONI BALEIMATUKU also known as **SAMISONI BALEIYAROI** between the 1st of December, 2016 and 12th of November 2017 at Nadi and Lautoka in the Western Division, unlawfully and indecently assaulted “AD”.

SECOND COUNT
(Representative Count)

Statement of Offence

RAPE: Contrary to section 207 (1) and 2 (a) of the Crimes Act 2009.

Particulars of Offence

SAMISONI BALEIMATUKU also known as **SAMISONI BALEIYAROI** between the 1st of December, 2016 and 12th November, 2017 at Nadi and Lautoka in the Western Division penetrated the vagina of “AD” with his penis without her consent.

2. The three assessors returned with a unanimous opinion that the accused was not guilty of both the offences as charged.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called the complainant and the defence called the accused and another witness.
5. On 7th June, 2017 the complainant was walking home with her friend Laite after a church practice when the accused came in his car and asked for directions to reach the AFL pool. This was the first time she had seen the accused.

6. The next time the complainant met the accused was during Diwali in 2017 when she was going home from church with some of her friends, at the Nadi Arya Samaj sign board in Waqadra the accused came in his car. He asked her to get in so that he could drop her home the complainant got into the car leaving behind her friends.
7. On the way the accused told the complainant if he could go to Shop N Save supermarket to buy something but he never went to the supermarket. He drove the vehicle and parked it near the sign board of Nasoso the accused asked the complainant whether they could be friends or be in a relationship. The complainant refused and then questioned him if he meant more than a friend or just a friend.
8. In the car the complainant was sitting in the back seat while the accused was driving. After parking the car the accused turned towards the complainant and in an angry tone he was forcing the complainant to remove her pants and panty. The complainant was scared so she did as she was told. The accused came to the back seat and started touching her breasts then he pulled her dress up and started licking her vagina.
9. The complainant did not agree to what the accused was doing to her. When the accused opened the front door of the car to come to the back seat the complainant did not leave the car because she was scared. She also did not call out or shout for help because there were no houses around.
10. After the accused had licked her vagina she told him that she wanted to go home. At this time a police car came to go into the Nasoso road so the accused started the car and both left.
11. When the police car came, the complainant did not call out for help although she was trying to open the car door so that she could run away,

but she couldn't because the accused was hanging her neck with the collar of her dress.

12. At home the complainant had her shower and she did not tell anyone about what had happened because she was scared of her family particularly her brother. The complainant knew the accused was drunk because she smelt alcohol when he was close to her.
13. During the same year on a Saturday the complainant was in Lautoka with her friend Esita sitting under a tree having lunch. After this, they wanted to take a walk to catch a bus home. While they were on the footpath crossing over to Jacks shop the accused came in his car. The complainant wanted to run away since she was scared.
14. The accused was calling Esita and the complainant was trying to pull Esita so that they can cross the road. The accused came out of his car and said to the complainant to get inside the car right away, she refused.
15. Esita got inside the car when the accused told her to get in. The complainant wanted to cross the road but he caught her and dragged her inside the car she did not call out or shout because the accused was touching her T-shirt with a knife at her back.
16. From here the complainant was taken to an unknown farm in Lautoka. At the farm the complainant was dragged out of the car and dragged into the bush. At this time, Esita was in the car. The complainant did not shout or yell because she was scared since the accused had a knife.
17. The complainant refused to remove her clothes the accused took a stone and told her that he will kill her. After the complainant removed her clothes

the accused had sexual intercourse with her. The complainant did not agree for the accused to have sexual intercourse with her.

18. The complainant did not go home since her family knew that she was at Esita's house for the weekend. At about 6pm the same day, the complainant left Esita's house and was hanging around in Namaka. It was a Saturday night the complainant with Esita was at Nasareci church compound waiting for their friends to come from the nightclub.
19. At this time, the police saw Esita and the complainant, while they were having a discussion with the police officers the accused came and said he was their guardian. The accused was forcing Esita to get inside his car so the complainant told the police that the accused was not their guardian.
20. There was an argument between Esita and the complainant because Esita wanted to go with the accused. As a result the police took the complainant, Esita and the accused to the police station.
21. At the police station the complainant made a report about the accused threatening her and the marks on her body and nothing else. She also told the police everything that had happened between the accused and her.
22. The complainant agreed when she got into the car of the accused near Arya Samaj sign board, the accused had not forced her to get in the vehicle she was happy to get in. It was after 8pm that they had stopped at Nasoso.
22. The complainant agreed that nowhere she had mentioned in her police statement about the accused touching her breast and licking her vagina. The reason why she did not tell the police officer recording her statement

was because she was thinking about the incident at the pine forest. When it was put to the complainant that at no time the accused had touched her breast and licked her vagina, the complainant stated that she knew it was not in her police statement but it was true the accused had touched her breast and licked her vagina.

23. The complainant agreed she met the accused in June, 2016 and not June 2017 as she had told the court. The complainant used to go for car rides and cruise with the accused and Dee in 2016 but not alone with the accused. She agreed that before the sexual encounter with the accused she had gone for a cruise with the accused for about 4 or 5 times. Her first sexual encounter with the accused was at Nasoso.
24. The complainant disagreed that she was in a boyfriend and girlfriend relationship with the accused, however, whenever she wanted money or clothes she would tell the accused who told her that he cared about her and would support her and he always supported her.
25. When it was put to the complainant that she had sex with the accused in the pine forest, sugar cane field and even at the accused's house at Sabeto, the complainant stated that all she knows it was at the accused's house at Sabeto.
25. In respect of the Nasoso incident the complainant stated that when she was struggling to get out of the car the accused was hanging her neck and had locked the car, but she did not tell this to the police and therefore it was not in her police statement.
27. When it was put to the complainant that she had called the accused to come and pick her from near Jacks in Lautoka the complainant disagreed.

She also maintained that the accused had dragged her inside his vehicle and had threatened her with a knife.

28. The complainant agreed it was not in her police statement but what she told the court was all true. In respect of what happened at the pine forest, the complainant stated that she went right inside the forest with the accused while Esita was in the car. They went right inside so that they could have sexual intercourse after both removed their clothes.
29. The complainant stated that it was true that the accused had made her lie on pieces of glass and broken beer bottles. However, she did not tell this to the police. The complainant agreed her police statement was recorded almost 8 days after the pine forest incident.
30. The complainant agreed that her cousin Manaini would join the accused and the complainant for bbq and pizza. On one particular day in 2017 she had invited Manaini to join her and the accused to drink at the house of the accused. The complainant said when she is alone with the accused, he threatens her but not when she has her friends with her.
31. When it was suggested that she could have avoided him altogether, she replied she has no answer for that question. The complainant could not remember that on this night close to midnight she had gone into the accused's bedroom and had sex while Manaini was sitting in the shed.
32. The complainant agreed the allegation of rape would not have been brought up by her if the police had not approached her. She was scared about her family particularly her brother finding out about what was going on between her and the accused.

33. The complainant disagreed that she knew the accused was in a relationship with another woman and that she was jealous of his new relationship or that he would stop giving her what she would ask for.
34. The reason why the complainant wanted to help the accused after having reported against him was because the accused had helped her when she was pregnant last year that is in 2019, when it was put to the complainant that the matter was reported in 2017 the complainant said she had no answer.
35. When it was put to the complainant that she wanted to help the accused after she had lodged her report because she knew the allegations she had made were all false the complainant agreed and stated her allegations were all false.
36. On the other hand the accused informed the court that in 2016 he was living at Sabeto, Nadi in his farm house. He met the complainant for the first time in 2016 at Namaka, Nadi when he was driving with a friend by the name of Dee.
37. The complainant showed them where the AFL pool was in Namaka. The following week on Friday the accused met the complainant after she called him to pick her. The complainant had asked Dee for the mobile number of the accused.
38. The complainant had called him between 8 and 9pm. He went and picked the complainant they had their dinner and then he dropped the complainant at her home. By this time it was 11pm to midnight.

39. Thereafter the complainant used to call him and they met about 4 to 5 times. The accused knew he had a good and strong relationship with the complainant since whatever she needed he supported her eventually they were to get married. The reason he fell in love with the complainant was because of the hardship she was going through.
40. The complainant used to visit his farm in Sabeto sometimes for the whole day or for 2 days, sometimes she comes with her friends and they spent 2 to 3 days together. After meeting each other for about 4 to 5 times the first time they had sexual intercourse was in a motel in Lautoka they had come for dinner and then they ended up paying for a room. After this, their love grew stronger and more intimate.
41. In respect of the incident at Nasoso, the complainant was sitting in the front seat he had parked the vehicle near the airport on the road before Nasoso. Since they were sitting close to each other, the accused started touching her hands and then both agreed to have sex so they went to the backseat removed their clothes and had sexual intercourse.
42. According to the accused every time the complainant calls him they used to have sex sometimes after 2 or 3 days. The accused stated that the complainant had lied when she said he had forcefully touched her breasts and licked her vagina.
43. In respect of the pine forest incident, it was 3rd November, 2016 the accused had started work he went to Lautoka to pick his employer's car. When he was in Lautoka, the complainant called him to pick her from Narara Parade near Jacks shop. It was Friday the accused came, the complainant was with Esita the road was busy as he stopped the vehicle the complainant sat in the front seat and Esita at the back seat.

44. The accused denied he had dragged the complainant into the car and that he had a knife with him which he had held at her back. They went to the motel but it was full so they went up to the pine forest in Tavakubu to have sexual intercourse.
45. At the pine forest the complainant and the accused left the car with Esita sitting in the car. In the forest both removed their clothes and had sexual intercourse. The complainant was not lying on pieces of glass and broken beer bottles and she was not crying since the accused took good care of her and did not force her.
46. After having sexual intercourse the complainant asked him that she wanted to have a haircut and she also asked for some money to buy clothes for herself and Esita. The accused gave her \$80.00.
47. The accused said they had a boyfriend and girlfriend relationship he used to buy the complainant her clothes, drinks and cigarettes. The complainant would always come to his house with him, clean the house, sometimes cook and wash the clothes.
48. One early morning at about 1am when passing through Namaka he saw the complainant and Esita standing by the road. At this time Esita and her elder sister were staying with him so he stopped his taxi to pick Esita. Esita wanted to get in his vehicle but the complainant told Esita not to. At this time there was an argument when he was pulling Esita into the car the police came and took all of them to the police station.
49. At this time, the relationship between the complainant and the accused was not good and both were not in good terms. The reason why the accused

and the complainant were not in good terms was because he was with another girl by the name of Lusiana and the complainant was in another relationship. They were not in good terms for about two weeks but the complainant was calling him often and kept apologizing.

50. The accused maintained that he did not have forceful sexual intercourse with the complainant at the pine forest and also he did not touch the breast or lick the vagina of the complainant at Nasoso. According to the accused the allegations were false.
51. The final defence witness Manaini Nuku informed the court that she came to know the accused through the complainant who was her neighbour. The complainant usually came to her house to use her phone to call the accused and this was how she was able to meet the accused with the complainant and other girls.
52. The witness used to go with the accused and complainant to buy pizza and bbq. In December the complainant had invited her for drinks at the house of the accused at Sabeto. This was not the first night the complainant had invited her for drinks at the house of the accused.
53. At the house of the accused the witness was sitting alone while the complainant and the accused were sitting in a corner. After a while they told Manaini that they were going inside the room to talk.
54. After a while they came out, the witness heard the complainant wanted to go to the After Dark nightclub the accused dropped the witness at her home. From her observations she knew that something was happening

between the accused and the complainant on that night they were drinking long neck Fiji Gold beer.

55. The witness stated that the complainant was related to her from her grandmother's side. The complainant and the accused did not spend a lot of time in the room according to the witness when they were drinking she saw the complainant and the accused were behaving like girlfriend and boyfriend, laughing and talking with each other.
56. After carefully considering the evidence adduced by the prosecution and the defence, this court is unable to accept the evidence of the complainant as truthful and reliable. From the evidence before the court it is glaringly obvious that she falsely implicated the accused for her selfish and dubious reasons.
57. She willingly went with the accused to numerous places from the time she started meeting him. Although the complainant denied that she was not aware that the accused was in another relationship I do not accept this to be the truth. At the time, the police had escorted the accused, Esita and the complainant to the police station the relationship between the accused and the complainant was not good.
58. I accept the evidence of the accused that at this time Esita and her elder sister were staying with him. In my view this was the reason why the complainant had reacted against the accused when he told Esita to get in his car. It was the complainant who objected to this and was pulling Esita out of the car.

59. The complainant struck me as a person who knew what she was doing and she was able to manipulate the accused into spending money on her and her friends. The complainant did not tell the complete truth in court, her demeanour was not consistent with her honesty.
60. The complainant narrated the two incidents to make it look like a genuine happening which did not add up. The evidence of the complainant was improbable if she was sexually assaulted and raped she would not have continued to meet the accused and go with him to eat bbq, pizza and drink at his house.
61. The complainant was a free agent at all times and she had the opportunity to tell someone about what the accused had done to her. I do not accept that the complainant was afraid of telling her family members about what had happened to her. Although she may have been afraid of her brother, but there were other family members and her friends who she could have told.
62. The complainant did not give crucial information in respect of the two incidents to the police when she was referred to her police statement she failed to give any satisfactory explanation for the omissions and discrepancies between her evidence and her police statement. In my view the complainant did not tell truth in court. During cross examination the complainant was discredited to the extent that her evidence became worthless.
63. The most appalling aspect of the complainant's evidence was her admission that she had made a false allegation against the accused. This revelation on oath speaks about the credibility of the complainant, despite

the efforts of the state counsel to repair this revelation, this court is unable to give any weight to the complainant's evidence in respect of the allegations raised.

64. On the other hand, I accept the evidence of the accused as honest and reliable. He was able to withstand vigorous cross examination. Although during cross examination he was unable to answer some questions, in my view it was a natural response considering the fact that those questions were in respect of peripheral issues not related to the substantive allegations.
65. When the accused was referred to his caution interview, the inconsistencies with his evidence were not significant to adversely affect his credibility. The discrepancies were minor and it did not relate to the allegations.
66. The defence witness Manaini was also believable. Her observations of the complainant and accused were reliable and I have no doubt in my mind that the accused and this witness told the truth in court.
67. On the totality of the evidence adduced, the complainant's version in respect of the two allegations raised against the accused is not probable and believable. Accordingly, it is unsafe to find the accused guilty upon the unreliable evidence of the complainant.
68. There are many doubts in this case, the complainant had consented to all the sexual acts of the accused but then made a turn around to elevate herself in the eyes of her family members after she was taken in for questioning by the police during the early hours of a morning from the

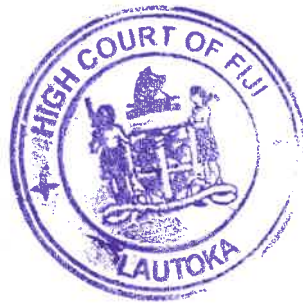
roadside. Since the complainant's relationship with the accused was not good at the time she conveniently blamed the accused by raising these false allegations.

69. This court is not satisfied beyond reasonable doubt that the accused had between the 1st of December, 2015 and 12th November, 2017 unlawfully and indecently assaulted the complainant.

70. This court is also not satisfied beyond reasonable doubt that on the dates mentioned above, the accused had penetrated the vagina of the complainant without her consent.

71. For the above reasons, I accept the unanimous opinion of the assessors that the accused is not guilty of both the offences as charged. The accused is acquitted forthwith.

72. This is the judgment of the court.



Sunil Sharma
Judge

At Lautoka
26th October, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.