

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 343 OF 2020S

STATE

VS

RONALD MUNESH GOUNDAR

Counsels : Ms. S. Tivao and Ms. M. Ali for State.
Ms. L. Filipe and Mr. J. Buakula for Accused.

Hearings : 19 and 20 July, 2022.

Judgment : 29 July, 2022.

JUDGMENT

1. On 19 July 2022, in the presence of his counsels, the following counts in the following information was read over and explained to the accused:

“Count 1

Statement of Offence

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

Particulars of Offence

RONALD MUNESH GOUNDAR between the 11th day of September, 2020 and the 12th day of September, 2020 at Nasinu in the Central Division, had carnal knowledge of S.B. without the consent of the said S.B.

Count 2

Statement of Offence

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

Particulars of Offence

RONALD MUNESH GOUNDAR *between the 11th day of September, 2020 and the 12th day of September, 2020 at Nasinu in the Central Division, penetrated the vagina of **S.B.** with his tongue, without the consent of the said **S.B.**”*

2. He said, he understood the same and pleaded not guilty to the two counts in the information. Consequently, the two questions that needed to be answered in this case, were as follows:
 - (i) On count no. 1, did the accused rape the complainant (PW1) between 11 and 12 September 2020, at Nasinu in the Central Division?
 - (ii) On count no. 2, did the accused insert his tongue into the complainant's (PW1) vagina between 11 and 12 September 2020, at Nasinu in the Central Division?

3. As a matter of law, the burden to prove the accused's guilt beyond reasonable doubt rest on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. There is no obligation on the accused to prove his innocence. He is presumed innocent until proven guilty beyond reasonable doubt in a court of law.

4. For the accused to be found guilty of rape, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) the accused
 - (ii) penetrated the complainant's vagina with his penis (count no. 1); or
 - (iii) penetrated the complainant's vagina with his tongue (count no. 2);
 - (iv) without her consent; and

- (v) he knew, that the complainant was not consenting to 4 (ii) or 4 (iii), at the time.
5. The slightest penetration of the complainant's vagina by the accused's penis (count no. 1) or the slightest penetration of the complainant's vagina by the accused's tongue (count no. 2), is sufficient to satisfy elements 4 (ii) or 4 (iii) above. Whether or not the accused ejaculated, is irrelevant.
 6. "Consent" is to agree freely and voluntarily and out of her own freewill. If consent was obtained by force, threat, intimidation or by fear of bodily harm to herself or by exercise of authority over her, that "consent" is deemed to be no consent. The consent must be freely and voluntarily given by the complainant.
 7. It must also be established by the prosecution beyond reasonable doubt that the accused knew the complainant was not consenting, at the time. The court will have to look at the parties' conduct at the time, and the surrounding circumstances, to decide this issue.
 8. After the accused's not guilty pleas were taken, the prosecution opened her case. Later, she called the complainant (PW1), as her first witness. She said, on 11 September 2020, she went with some friends to the accused's house. She pointed the accused's house in Photos 3, 4 and 5 of the Booklet of Photos, which was tendered in evidence, as Prosecution Exhibit No. 1. PW1 said, her friends were Mereoni, Sereana and Ziggy. PW1 said, they met the accused at a nearby bus stop. Prior to going to the accused's house, PW1 said, the accused bought them three packets of Chinese whiskey. PW1 said, when they arrived at the accused's house, they had some sausages and chips. It was dark at the time. PW1 said, they then went into the room shown in Photo 5 of Prosecution Exhibit No. 1. PW1 said, her 3 friends, herself and the accused then began to drink the Chinese whiskey. PW1 said, they drank the whiskey right into the early morning

of 12 September 2020. PW1 said, she recalled consuming 6 to 7 glasses of Chinese whiskey.

9. PW1 said, when in the room shown in Photo 5, the tubelight was turned on, and she could see her friends and the accused clearly. When drinking, they were sitting close to each other, probably an arm's length from each other. PW1 said, they had been together since 10.30 pm on 11 September 2020. PW1 said, early morning of 12 September 2020, she was tired and felt asleep on Sereana's lap, on the floor. PW1 said, sometime later she work up. PW1 said, she noticed she was lying on the bed shown in Photo 5. PW1 said, she saw the accused trying to remove her pants. PW1 said, the accused was sitting on her legs and knees and pulling down her pants.

10. PW1 said she told the accused to stop. PW1 said, the lights (white globes) in the room were turned on, and she could see the accused. PW1 said, the accused was an arm's length from her. PW1 said, when she told the accused to stop taking off her pants, he slapped her on the cheek. PW1 said, she shouted. PW1 said, the accused told her to shut up or he will kill her. PW1 said, she was afraid. PW1 said, the accused later pulled her pants and panty off. PW1 said, the accused then licked her vagina without her consent. PW1 said, after licking her vagina, the accused then inserted his penis into her vagina, without her consent. PW1 said, the accused then had sexual intercourse with her for about 30 minutes. PW1 said, she was crying all the time. PW1 said, the accused was moving his penis in and out of her vagina continuously. PW1 said, she saw the accused's face clearly. PW1 said, nothing obstructed her view. She said, it was the first time she met the accused. PW1 identified the accused in court as the person who raped her, at the material time. The prosecution next called 3 witnesses, none of them were at the crime scene to witness the alleged rape.

11. At the end of the prosecution's case, the parties agreed that on the evidence so far laid before the court, there was a prima facie case against the accused. The court agreed with the parties and ruled accordingly. The standard options were put to the accused. He chose to give sworn evidence in his defence. He also chose not to call any witness.
12. The defence case was very simple. On oath, he denied the rape allegations against him. He said, on 11 September 2020, he was staying at 20 Howell Road, Samabula. He acknowledged that the house shown in Photos 3, 4 and 5 of Prosecution Exhibit No. 1 belonged to his parents. He said, he also resided at the address. He said, he did not know the complainant, at all. He said, he did not insert his penis into the complainant's vagina, nor licked her vagina, between 11 and 12 September 2020. That was the defence's case.
13. Has the prosecution proven the accused's guilt beyond a reasonable doubt? The court had carefully listened to and carefully considered the complainant's evidence as against the accused's evidence. The accused was 39 years old at the time, while the complainant was 15 years 5 months old. The court had also carefully considered the demeanours of the witnesses, while they were giving evidence. Although the court found the teenage complainant been naive in staying out late with her friends and strangers at the time, I find her complaint on the rape allegations credible. Although it was stupid of her to drink Chinese whiskey with strangers at the time, I find her evidence on the rape allegations credible and I accept the same. I find the accused's evidence not credible, and I reject his sworn denials. I accept the complainant's evidence of rape allegation in count no. 1 and 2, and I accept her version of events on the same. I reject the accused's denials on the same.
14. Given the above, I find the prosecution had proven its case against the accused beyond a reasonable doubt on both counts no. 1 and 2. I find him guilty as

charged on both counts, and I convict him accordingly on those counts. I order so accordingly.



Solicitor for State
Solicitor for Accused

: Office of the Director of Public Prosecution, Suva
: Legal Aid Commission, Suva.

A handwritten signature in blue ink, appearing to read "Salesi Temo".

Salesi Temo
JUDGE