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IN THE FIJI COURT OF APPEAL
Criminal Appeal No: 10/91

BEFORE THE HON JUSTICE MICHAEL M HELSHAM
PRESIDENT OF THE FIJI COURT OF APPEAL
AND THE HON SIR MOTI TIKARAM
RESIDENT JUDGE OF APPEAL
AND THE HON MARI KAPI
JUDGE OF APPEAL

WEDNESDAY THE ELEVENTH DAY OF MARCH, 1992 AT 9.30 A.M.

BETWEEN: TANIELA LAVETIVITI
 PAULIASI VATUNILABA APPELLANTS

- vs -

S T A T E RESPONDENT

MR TANIELA LAVETIVITI
MR PAULIASI VATUNILABA

APPELLANTS APPEARED IN PERSON

MR MATAITOGA

FOR THE RESPONDENT

JUSTICE HELSHAM : The accused were jointly charged with Rape which was alleged to occur on the 28th of April 1989. They were brought before the Court and stood trial on the 4th of February 1991.

At the hearing, evidence was given by the victim and there was evidence given by way of corroboration of her story. In particular there were extrinsic signs of damage particularly to her clothes and other factors which the Assessors and the Learned Judge could, and no doubt did say amounted to adequate corroboration.

The accused were both drunk at the time the offence occurred and as the learned trial Judge said, the morals of the victim were not in issue; and although she too seems to have been in a state of some form of intoxication, that gave them no excuse for behaving in the way that they did. At the trial, neither accused objected to their statements to the Police being admitted in evidence.

Today, one of the accused has raised the matter of the absence of the doctor. This matter was raised at the trial, the learned Judge and the Assessors were informed that the doctor, who was an expatriate, had ceased to reside in Fiji and had gone home, and leave was sought to tender the Medical Certificate that had been prepared. In the circumstances it was perfectly proper for the learned trial Judge to admit that in evidence.

JUSTICE HELSHAM (CONTD.) : We have no hesitation at all in upholding the convictions. On the matter of sentence, the learned Director has indicated that he would ask this Court to increase the sentences under the powers we have to do that pursuant to the Court of Appeal Act.

Whilst we believe that both these accused were very fortunate indeed to have received only sentences of 5 years imprisonment for this offence, we do not believe that in all circumstances we ought to entertain an application to increase that sentence. Both accused have shocking records and at least one of them, I think both, have records which include violence.

In the circumstances there is no merit at all and we repeat that in case it should come to the attention of others, that we think that in this sort of case a sentence of 5 years is lenient.

In those circumstances we will dismiss the appeal against both the appellants.

Arundell M. Beebe

PRESIDENT

for FIJI COURT OF APPEAL