

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 030/2013

BETWEEN: THE STATE

AND: SEKOVE WAIDRANU

COUNSEL: Mr. S. Vodokisolomane for the State
Mr. S. Waqainabete for the Accused

Dates of Trial: 28 - 30/04/2014

Date of Summing Up: 30/04/2014

Date of Judgment: 01/05/2014

[Name of the victim is suppressed. She will be referred to as U.S.]

JUDGMENT

[01] SEKOVE WAIDRANU has been charged with the following charge on information dated 17th May 2013.

FIRST COUNT

Statement of Offence

RAPE: Contrary to section 207(1) and 207(2) (a) of the Crimes Decree No: 44 of 2009.

Particular of Offence

SEKOVE WAIDRANU between the 1st day of November 2012 and 31st day of November 2012 at Batiri Village, Seaqaqa, in the Northern Division, had carnal knowledge with U.S. without her consent.

- [02] After the trial the assessors unanimously returned with not guilty verdict against the accused.
- [03] I direct myself on my own summing up and on looking at the evidence in its entirety I accept the assessors' majority opinion.
- [04] According to the victim, the accused (father-in law) had forcibly had sex twice in the month of November 2012 in the absence of her husband. On the both occasions though she brought this to her husband's notice immediately, her husband did not take any action due to fear of his father. In the cross examination witness admitted that she had not made attempt to run from the scene or inform the incident to the village headman. She lodged her complaint 6 months after the alleged incident. Her family left the accused's house after accused declared that he was going to give the house to his younger son and not to victim's husband.
- [05] Ilisoni Josua is one of the sons of the accused. He admitted that his wife informed him that his father forcibly had sex with her. But he did not take any action due to fear of his father. In the cross examination he said that this is a false allegation made against the accused as the accused decided to give his house to his younger brother.
- [06] Accused admitted that he had sex with the victim twice with her consent. The accused suffers a disease called Peptic Ulcer since 2002. After his arrest he was not given proper medical attention. His caution interview was recorded

while he was not in good mental condition. The officer who recorded his caution interview admitted that he could not give accused's rights before or during recording of his caution interview statement.

- [07] The paramount duty of the prosecution to prove the accused's guilt beyond reasonable doubt. It is not for the accused to prove his innocence. The burden of proof lies on the prosecution to prove the accused's guilt beyond reasonable doubt, and that burden stays with them throughout the trial.
- [08] After careful consideration of the evidence presented by prosecution, I find it contains lots of ambiguity and creates a genuine doubt in my mind. I find the prosecution had not proved their case beyond reasonable doubt. The benefit of doubt must accrue to the accused.
- [09] Hence, I agree with the assessors and find the accused is not guilty of the charge of Rape contrary to Section 207(1) and (2) (a) of the Crimes Decree No: 44 of 2009. He is acquitted accordingly.



P Kumararatnam
JUDGE



At Labasa
01/05/2014