

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No: HAC 66 of 2013

BETWEEN:

THE STATE

AND:

DANIELE NAULUVULA

Counsel: Mr. S. Vodokisolomone for State
Mr. R. Tagivakatini for Accused

Date of Hearing: 29-30 December 2014

Date of Judgment: 31 December 2014

JUDGMENT

[1] The Accused is charged with one count each of assault occasioning actual bodily harm and rape. After a two-day trial, the assessors expressed unanimous opinions that the Accused is guilty of assault occasioning actual bodily harm on count 1 but not guilty of rape on count 2. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up. Under our criminal justice system, the final decision on the facts rest with the trial judge and not the assessors. The assessors only aid the trial judge to arrive at the verdict of the Court by expressing opinions.

- [2] The resolution of the charges against the Accused depends on whether the complainant was a truthful and reliable witness. Obviously, the assessors have accepted her account of assault but not her account of rape. Her evidence was that she accompanied the Accused and some friends for a drinking session. When she left the group and was walking, the Accused approached her. She accompanied him to a spot on the beach upon his request to consume more alcohol. When they arrived at the spot, the Accused grabbed her arms and forced her on the ground. When she struggled, he punched her in her neck. He forcefully removed her clothes from waist down and then penetrated her vagina with his penis. She said she did not consent. When he got distracted by a mobile ringtone she managed to escape and return to her village. She did not immediately complain to anyone because she felt ashamed of the rumours that would follow if others in the village came to know about the sexual assault. Two days later, she reported the matter to the police. She was medically examined. Medical examination showed bruising on arms and neck.
- [3] The defence case is one of denial of the charges. The Accused has elected not to attend his trial. The defence offered no evidence. I draw no adverse inference against the Accused for being absent from his trial or for not offering any evidence. The Accused carries no burden to prove anything. The prosecution carries the burden to establish the Accused's guilt beyond reasonable doubt.
- [4] The identification of the Accused is not an issue. The issue is whether the alleged crimes were committed. When the complainant gave evidence, she struck me as an honest and reliable witness. The inconsistencies regarding whether she was grabbed from the back or front, and whether the Accused threatened her three or four times are not material. The inconsistencies do not affect the veracity of her evidence. She had consumed considerable alcohol when the alleged incident happened. I do not expect her to remember every detail of the incident. When she returned home after the incident, she did not complain to anyone that the Accused sexually assaulted her. I accept her explanation for not complaining. She was a single mother of three children. The Accused was her aunt's husband. They lived in the same village. She felt ashamed and was concerned about the village rumours if she brought the sexual incident involving a male relative to the attention of her relatives. I accept she is

telling the truth when she said the Accused punched her. I accept she is telling the truth when she said the Accused forcefully undressed her and then penetrated her vagina with his penis, without her consent. I find the Accused knew the complainant had not consented. That is why he used force to have sexual intercourse. I accept the bruising on the complainant's arms and neck were caused by the assault on her by the Accused.

[5] I feel sure of the Accused's guilt on both charges. Accordingly, the Accused is convicted of assault occasioning actual bodily harm and rape as charged.



Daniel Goundar

JUDGE



At Labasa

31 December 2015

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused