

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 140 of 2015

STATE

v.

JESE LOANAKADAVU

Counsel: Mr. R. Kumar for State  
Ms. M. Tarai for Accused

Dates of Hearing: 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> April 2016

Date of Summing Up: 14<sup>th</sup> April 2016

Date of Judgment: 15<sup>th</sup> April 2016

---

**JUDGMENT**

---

1. The accused is charged with the following 2 counts of Rape.

**First Count**

*Statement of Offence*

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

*Particulars of Offence*

**JESE LOANAKADAVU** on the 29<sup>th</sup> day of March, 2015 at Qiolevu Road, Navuso, Nausori in the Central Division, penetrated the vagina of **UNAISI DIWATI** with his finger, without the consent of the said **UNAISI DIWATI**.

**Second Count**

*Statement of Offence*

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

*Particulars of Offence*

**JESE LOANAKADAVU** on the 29<sup>th</sup> day of March, 2015 at Qiolevu Road, Navuso, Nausori in the Central Division, had carnal knowledge of **UNAISI DIWATI**, without her consent.

2. After trial 3 assessors unanimously opined that the accused is not guilty of both counts of Rape and also not guilty of a lesser offence of Defilement. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at the trial.
3. Prosecution called the complainant, her mother and the doctor who examined the complainant to give evidence and the defence called the accused and 2 other witnesses.

4. The evidence of the complainant was that when she was walking along the road on her way home, the accused grabbed her, took her to his house and raped her. She said that the accused was not known to her and she got to know his name as 'Jese' from him only when he did these things to her.
5. She also said that the accused held with her hair and dragged her. She said that in the house, the accused tied her hands, legs and mouth and that the accused kept her under the bed. Her brother with one Taitusi had come in search of her. When she was found in the room, they had assaulted the accused.
6. The accused in his evidence said that he had a girlfriend – boyfriend relationship with the complainant for 3 weeks. They had met at the farm before. He said that when he was coming after a bath from the creek the complainant followed him. She had agreed to go home. He admitted having sexual intercourse with her and also admitted penetrating his finger into her vagina. He said that he did all that with consent and that they kissed and touched each other. He said that the complainant never reacted in a way that she did not agree or dislike what they were doing.
7. The accused further said that after having sex they had lunch together and the complainant had even washed the dishes after lunch. When the brothers came the complainant had got panicked and had wanted to

hide. Then he had told her to hide in the room. Then brother had entered the house and when they found the complainant in the room they had assaulted the accused and had taken the complainant away.

8. The doctor who examined the complainant said that there was a laceration in the vagina which was bleeding and forceful penetration had caused it. However, in cross examination she said that even when having consensual sex with a girl of that age may or may not cause such injury.
9. The complainant denied going to a tin house and playing cards in that house with some others on the way home. However, witness Ratina testified that the complainant was playing cards with them. When the accused passed that house to go home from the creek, the complainant had followed him. He had seen both the complainant and the accused going to accused's house.
10. The person named Taitusi who went to look for the complainant with brother of the complainant to the accused's house also gave evidence for the defence. He is a cousin of the complainant. He said that when the accused told them that the complainant Unaisi was not in the house, he entered the house and found her in the room. He said that the complainant was not tied. She had been sitting down holding her bag.

11. The complainant said that her legs, hands and mouth were tied and the brothers untied her. Once she said that she was kept under the bed tied. In examination in chief she never said that her hands, legs and mouth were tied with a cloth. She came out with this when she was asked in cross examination as to why she did not run away. Then only she said that she was tied up by the accused. Complainant changed her own version many times to suit the question to get away from the difficulty she faced to answer the questions.
12. Although the complainant denied playing cards that day, witness Ratina Levu testified that the complainant was playing cards with them when Jese passed that house.
13. I find that the complainant was not at all a reliable witness and her evidence should not be relied upon. She contradicted in her own evidence when she tried to show that she did not consent and that she was forcefully dragged to the house by the accused. I find that the complainant was not truthful when she said that she was dragged to the house and her legs, hands and mouth were tied by the accused. I find that the accused was truthful when he said that the complainant came on her own choice and that they had a relationship for 3 weeks.
14. On the evidence placed before the Court, the assessors were entitled to come to the conclusion that the complainant consented to the sexual

acts. Therefore I agree with the unanimous opinion of the assessors that the accused is not guilty of Rape in Counts No. 1 and 2.

15. Now I turn to consider the lesser offence of Defilement defined in section 215 of the Crimes Decree 2009.

16. It is an admitted fact that the complainant was between the age of 13 and 16 years at the time of the alleged offence. Section 215 (2) of the Crimes Decree provides:

*"It shall be a sufficient defence to any charge under sub-section (1) if it shall be made to appear to the court that the person charged had reasonable cause to believe, and did in fact believe, that the person was of or above the age of 16 years."*

17. The accused took up that defence. The reasonable cause to believe may be elicited from any witness. But, what the accused believed is within the knowledge of the accused. The accused giving evidence said that he believed that the complainant was above 16 years of age. The reasons he gave for that belief were, that he had never seen complainant going to school in uniforms. Therefore he said that he believed that the complainant has completed her secondary school.

18. In her evidence, the complainant also said that she did not go to school after class 5. The accused said in his evidence that when he met the

complainant the first day he asked her whether she was schooling and that she had told him that she was schooling at FNU. However, the complainant in her evidence denied telling the accused that she was attending FNU. As I said before, the complainant cannot be considered a reliable witness. However, the accused was truthful and forthright in his evidence. He was consistent.

19. I find that the accused made it appear to court that he had reasonable cause to believe, and did in fact believe that the complainant was above the age of 16 years. Therefore I agree with the unanimous opinion of the assessors that the accused is not guilty of the offence of Defilement as well.

20. Hence I find the accused not guilty of Counts 1 and 2 and acquit him accordingly.



Priyantha Fernando  
**Judge**

**At Suva**

15<sup>th</sup> April 2016

**Solicitors**

Office of the Director of Public Prosecutions for the State.  
Office of the Legal Aid Commission for Accused.