

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC. 196 of 2013**

**STATE**

**V**

**LOG NANDAN GOUNDAR**

**Counsel** : Ms. S. Puamau for State  
Ms. V. Ravono for the Accused

**Dates of Hearing** : 11<sup>th</sup> April – 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 offence;

*Statement of offence*

**Rape:** Contrary to Section 149 and Section 150 of the Penal Code, Cap. 17

*Particulars of offence*

**LOG NANDAN GOUNDAR** between the 1<sup>st</sup> day of June 2008 and 30<sup>th</sup> day of June 2008, at **COLO-I-SUVA** in the **CENTRAL DIVISION**, had unlawful carnal knowledge of **LOSENA VOKABI**, without her consent.

2. The assessors have returned with divided opinions. Two assessors found the accused guilty of rape and one assessor found him not guilty.

3. I direct myself in accordance with the summing up delivered to the assessors on 14<sup>th</sup> April 2016 and the evidence adduced during the trial.
4. To find the accused guilty of rape contrary to section 149 of the Penal Code, the prosecution must prove the following elements beyond reasonable doubt;
  - a) the accused,
  - b) had unlawful carnal knowledge of **LOSENA VOKABI**
  - c) without her consent,
  - d) accused - knew or believed that she was not consenting, or  
was reckless as to whether or not she was consenting
5. The prosecution led the evidence of the complainant, the investigating officer Alekisio Lawakeli and one Shalendra Dutt. Witness Dutt was initially charged along with the accused for aiding and abetting rape but later he was granted immunity by the prosecution.
6. In brief, the complainant's account of the alleged offence was as follows;
  - a) She went to the back of the Valelevu Police Station on one night in June 2008 around 11.00pm and complained to two police officers that a man is following her;
  - b) The two police officers went with her in a police vehicle in search of the said man but could not find him;
  - c) On her request the two police officers then dropped her and three of her friends near her house at Delaitokatoka;
  - d) The same two officers came back half an hour later and told her to come with them as they have found the man who followed her;
  - e) She got into the vehicle under the impression that she will be taken to the police station but she was taken to Colo-i-Suva Forest Park;
  - f) One police officer sat with her on the back seat in the police vehicle while the other one was driving;
  - g) When she realised that they are not going to the police station, she asked softly where they are taking her and she was told that "we just go and see something here";

- h) When the vehicle stopped at Colo-i-Suva, she and the officer who was sitting with her in the back seat with her got down from the vehicle from their respective sides;
- i) When the two were standing beside the vehicle that officer who was sitting with her in the back seat asked her whether he can have sex with her;
- j) She said 'no';
- k) Then he pulled down her pants, wore a condom, inserted his penis and they had sex;
- l) She was crying when this happened;
- m) When they were coming out of the park, they met two security officers who offered them their assistance to show the way out. Then she undertook to guide the two police officers to go out of the park because she knew the way;
- n) She did not complain to the security officers because the person she had sex with had threatened her not to tell anyone and she was also afraid of the security officers;
- o) In her evidence in chief she said she complained to the police on 19/06/08. But during cross examination she admitted that she first complained on 19/08/08. She said the reason for the delay was that she felt ashamed and because she was threatened. She also said, she told the police about having sex, when the police questioned her about a complaint lodged by a security officer regarding the police vehicle she travelled being seen inside the Colo-i-Suva Park. She complained after her brother questioned her about the said complaint made by the security officer;
- p) She did not identify the accused in court as the person who committed the offence against her. However, she said during reexamination that she had seen the two police officers before that night. She had seen them at Valelevu Police Station and she knew that they are police officers working at Valelevu Police Station, before June 2008.

7. On the face of it, the complainant's evidence give rise to the following questions;

- a) Why did she go to the back of the police station and spoke to two male police officers who were there inside a police vehicle without going inside the police station to lodge her complaint?

- b) Why did the police officers undertake to drop the complainant and 3 of her friends at Delaitokatoka that night?
  - c) Why did the complainant at once agree to go with the two male officers in the middle of the night and why didn't she raise her concern when the male police officer sat next to her on the back seat of the vehicle?
  - d) Considering the above questions and her answer during reexamination that she had seen and she knew the two police officers before the incident, was the accused known to the complainant and if so, why didn't she identify the accused?
  - e) Why did she undertake to guide the two police officers including the perpetrator to go out of the park which led to the two security officers getting down from the vehicle and her being left alone with the perpetrator again?
8. Leaving aside those questions for a moment, now I turn to Prosecution Witness Shalendra Dutt. According to the prosecution, Witness Dutt is an accomplice and the prosecution relied on his evidence to prove the identity of the accused. However, the defence did not challenge Dutt's evidence regarding what happened on the day in question including his evidence on the identity of the accused. The position taken by the defence during the trial was that the accused and the complainant had consensual sex. The prosecution presented Witness Dutt as a truthful witness and the defence did not challenge the evidence he gave concerning the accused. Therefore, the circumstances of this case did not warrant the standard accomplice warning to be given regarding Dutt's evidence.
9. In terms of section 129 of the Criminal Procedure Decree 2009, corroboration of the complainant's evidence is not required to prove the guilt of the accused in a rape case. However, this does not mean that the court should totally disregard the evidence of other witnesses led by the prosecution in a rape case, apart from the complainant.
10. The prosecution presented Witness Dutt as a truthful witness. Witness Dutt's version of events was as follows;
- a) Around midnight on 08/06/08, while he was taking a rest at the back of Valelevu Police Station inside the police vehicle he was driving, the accused joined him. Accused told him that he want to have sex with a girl;

- b) After some time, complainant came and spoke to the accused. Then the accused told him that they should go and assist the girl. He complied and he ultimately dropped the complainant and 3 of her friends at Delaitokatoka;
- c) On the request of the accused, he went with the accused to Delaitokatoka again to pick the complainant. Complainant got in and she sat on the back seat of the vehicle;
- d) The accused also sat in the back seat and told him to go to Colo-i-Suva Forest Park. Complainant did not complain or protest when the accused sat on the back seat. On their way the accused and the complainant were talking softly;
- e) When he stopped the vehicle, the complainant and the accused got off and went behind the vehicle. The complainant did not refuse to get down from the vehicle;
- f) He did not see the complainant trying to run away. When the accused and the complainant came back inside the vehicle, he dropped the complainant back at Delaitokatoka;
- g) On their way out of the park, two security officers got into the vehicle to show them an alternative way out of the park as the entrance was locked. However, as the complainant had told the security officers that she knows the way out, they got off the vehicle after travelling a short distance;
- h) After he dropped the complainant and on their way back, the accused told him that he had sex with the complainant. When he asked the accused whether she liked it, accused told him that he does not know;
- i) The complainant did not complain to him about anything, anytime.

11. The prosecution presented both the above versions as true versions. However, it is pertinent to note that the version of the complainant cannot be reconciled with that of Witness Dutt on two crucial points. First point is concerning the reason for the complainant to go to the back of the Valelevu Police Station around 11.00pm on the night in question and what took place there, at that moment. The second point is on whether or not the complainant try to run away after she got down from the vehicle at Colo-i-Suva.

12. Witness Dutt did not say about searching for a man who followed the complainant at Valelevu. Where the complainant said in her evidence that the reason for her to go to the back of the Valelevu Police Station was the fact that she was chased by a man and that

she asked for help from the two officers who were inside the police vehicle; in his evidence in chief, Witness Dutt clearly said that the complainant came and spoke only with the accused. The prosecution has placed two versions before the court and seems to rely on both versions. However, there can be only one truth. Witness Dutt was a witness who had an incentive to tell the truth because his immunity was granted based on him giving honest and truthful evidence. It follows that, the evidence led by the prosecution through him without any challenge to that evidence is true according to the prosecution.

13. It is not open for me to speculate whether the prosecution overlooked to elicit certain information from Witness Dutt. I can only consider the evidence that was led in court as I have directed the assessors. The reason why this meeting between the complainant and the accused is a crucial factor in this case is because, the defence took up the position that the complainant did not come to the police station asking for help with regard to her being chased by a man. Defence says that she went to the back of the police station without going inside and spoke to the accused because she had some other intention that night.
14. With regard to the other point; during the examination in chief, complainant did not say anything about her trying to run away. During cross examination she said she ran a short distance and then she realised that it was too dark. She in fact said she ran a distance which is the same distance from the witness box where she gave evidence to High Court No.1. Witness Dutt clearly said during cross-examination that he did not see the complainant trying to run away and if she did he could have seen it. This fact was not challenged or clarified during reexamination by the prosecution. Again the prosecution has placed two versions before this court that are inconsistent.
15. Apart from the inconsistencies between the evidence of the complainant and that of Witness Dutt highlighted above, another cardinal question which bothers me is; 'Why did the complainant get down from the vehicle at Colo-i-Suva?'
16. The complainant did not say that she was forced to get down from the vehicle at Colo-i-Suva. Even according to witness Dutt, there was no compulsion for the complainant to get down from the vehicle at Colo-i-Suva. In her evidence in chief, complainant said the accused asked her whether he can have sex with her while the two were standing outside

the vehicle. During cross-examination she initially said this conversation took place inside the vehicle but when she was reminded of her evidence during the evidence in chief she said what she told during her evidence in chief is correct. The complainant did not clearly state where exactly did the incident take place in relation to the vehicle. According to her evidence in chief, she was standing beside the vehicle. During cross examination she said they were at the right side of the vehicle. Witness Dutt clearly and confidently, in his evidence in chief said that the complainant and the accused went behind the vehicle. During cross examination he further clarified that the complainant and the accused got down from their respective sides. Even the complainant admitted during her cross examination contrary to what she had said earlier, that she got off from the right side and the accused from the left side of the vehicle. Accordingly, from the available unchallenged evidence, it is clear that on the night in question at Colo-i-Suva Forest Park, the complainant got down and went towards the back of the police vehicle without any compulsion. But, the question as to why did the complainant voluntarily get down from the police vehicle and go behind the vehicle to be alone with the accused that night at Colo-i-Suva Forest Park remains unanswered?

17. The above factors including the questions I have outlined initially relating to the complainant's evidence, when taken together, creates a reasonable doubt in the prosecution case as to whether the prosecution has proved beyond reasonable doubt that the complainant did not consent to the sexual intercourse between her and the accused and whether the accused knew or believed or was reckless as to whether she was not consenting.
18. The evidence led in this case revealed to a certain extent, serious concerns regarding the conduct of the accused being a police officer at the material time. But the trial in this case was on whether or not the accused commit the offence of rape contrary to section 149 of the Penal Code between 1<sup>st</sup> June 2008 and 30<sup>th</sup> June 2008.
19. In my view, the prosecution has failed to prove the above charge against the accused beyond reasonable doubt.
20. Therefore I am unable to conform to the majority opinion of the assessors that the accused is guilty of the offence of rape as charged.

21. I concur with the opinion of the 2<sup>nd</sup> assessor who found the accused not guilty of the offence of rape as charged.

22. In the result, I find the accused not guilty of the offence of rape as charged and acquit him accordingly.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Ravono & Raikaci Law, Suva.