

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 33 of 2014

STATE

V

SHELVIN PRASAD

Counsels: Ms. A. Vavadakua for State
Mr. A. Paka (L.A.C.) for Accused

Date of Summing Up : 20 May 2016

Date of Judgment : 20 May 2016

JUDGMENT

- [1] The accused has been tried in this Court on one count of Rape and one count of Assault Occasioning Actual bodily harm.
- [2] After my summing up the three assessors returned with unanimous not guilty verdict on the rape and a majority verdict of guilty on the assault.

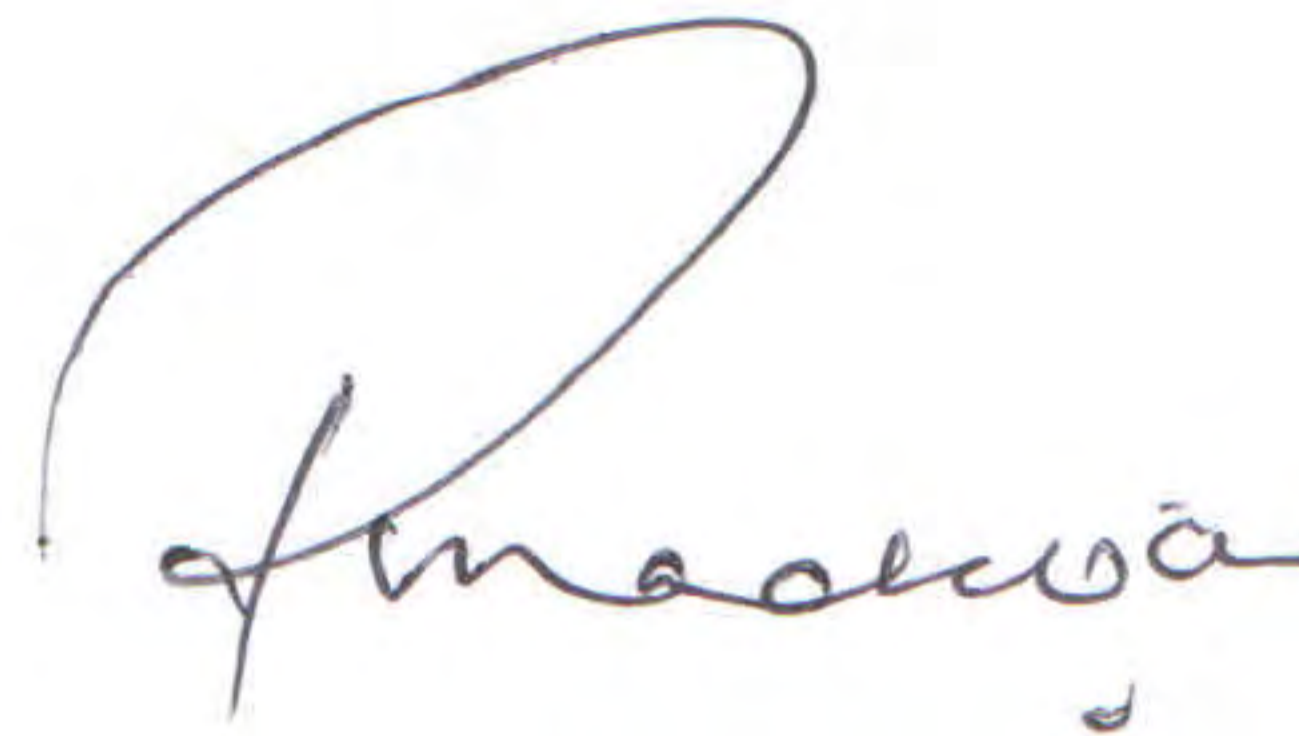
- [3] The Prosecution evidence came from the complainant of the Rape and a Medical Officer who examined her some 6 hours later.
- [4] The complainant, Aloesi, told of spending the afternoon with the accused, her neighbour, and his cousin. After a dinner in Labasa town the three of them repaired to a room in the Royal Hotel with liquor they purchased nearby. In the course of the evening and after consuming the liquor Aloesi felt drunk and dizzy and lay on the bed to rest. When partly asleep, she awoke to find the accused on top of her and partly penetrating her. She screamed and pushed him away and he then punched her in the face. She scrambled for her clothes, dressed and ran out of the room. She reported the matter to the Police in the early hours of the next morning. She was medically examined.
- [5] The Medical Officer told the court that his examination of Aloesi six hours after the incident revealed that she had bruising and tenderness to the left side of her face and as for her genital region there were no signs of violence and the hymen was not intact.
- [6] The accused elected to remain silent in his defence but he called two witnesses.
- [7] Neither of the two defence witnesses were present in the room but they did give evidence of contact between the complainant and the accused subsequent to the alleged sexual assault. This was contrary to the complainant's evidence.
- [8] DW2, "Pintu" said that at a grog session last year where he, the accused and the complainant were present, the complainant

had told the accused that she would not proceed with her complaint save the insistence of her mother.

- [9] Both defence witnesses were of the view that the accused and the complainant had been in an intimate relationship for some time before the alleged rape.
- [10] The evidence of the complainant was most unsatisfactory. It appeared that she had committed her narrative from memory which she delivered in chief before me. However when questioned and cross-examined on this narrative she was forgetful and contradictory. There was an unfortunate occurrence part way through her evidence when her mother appeared to be signaling to her from the gallery. Despite this being most improper, it did lend some credence to the defence evidence that this allegation was being sued by the mother.
- [11] The evidence of the two defence witnesses appeared to be truthful and it served to rebut the complainant's evidence that she did not socialize with the accused after the alleged incident.
- [12] I cannot be sure beyond reasonable doubt that the sexual act was without the consent of Aloesi and in accepting the unanimous verdict of the assessors I must find therefore that the accused is not guilty of rape and he is acquitted of that charge.
- [13] It would in the ordinary course that in not believing the complainant with regard to the rape, I would not be able to believe her with regard to the assault. There is no other evidence apart from hers that the accused punched her. However it was the defence case throughout and a concession made in Defence Counsel's closing speech that there was

contact between the accused and the girl's face. I therefore accept the majority verdict of the assessors and I find the accused guilty of that count and convict him accordingly.

[14] That is the Judgment of the Court.



P. K. Madigan
Judge



At Labasa

20 May 2016