

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 159 OF 2015

BETWEEN: STATE

PROSECUTION

AND: ALAFI JONE

ACCUSED PERSON

Counsel: Mr. E. Samisoni and Ms. S. Puamau for State
Ms. T. Kean for Accused

Dates of Hearing: 30th and 31st May 2016

Date of Summing Up: 1st June 2016

Date of Judgment: 2nd June 2016

JUDGMENT

1. The accused is charge with one count of Rape and one count of Assault Causing Actual Bodily Harm.

FIRST COUNT

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

Particulars of Offence

ALAFI JONE on the 24th August 2014 at Nasinu in the Central Division had carnal knowledge of **OLIVIA MAILULU** without her consent.

SECOND COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM:

Contrary to section 275 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ALAFI JONE on the 24th August 2014 at Nasinu in the Central Division assaulted **OLIVIA MAILULU** causing her actual bodily harm.

2. After trial the 3 assessors unanimously opined that the accused is guilty of both counts 1 and 2. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at the trial.
3. For the prosecution, the complainant, the medical doctor who examined the complainant and the investigating police officer gave evidence. The accused exercised his right to remain silent.
4. The complainant Olivia's evidence was that she went to Friends Night Club with a friend where she met her childhood friend Kelera, and her boyfriend Alafi the accused. They had been drinking alcohol in the night and in the early hours she had continued to drink with the accused after the other friends left.

5. She had passed out at the club and she had been at one Leilani's house at Newtown when she woke up. She could not remember how she came there.
6. When she woke up the accused had been on top of her removing her pants. She had struggled and had called for help. Then the accused had punched her and had strangled her neck to shut her up. She said that she was out again due to the amount of punches he gave and also as she was weak.
7. When she regained consciousness she had been half naked. She had been underneath the house in a place like a storage place on a tarpaulin. Her vagina had been paining and she could not see properly as her face was swollen, she said.
8. When she went to the house she had got to know from Leilani that it was her house. Leilani was very unfair because she did not call the police or anybody, she said.
9. She had gone straight to the police station and had made the complaint. Investigating police officer confirmed that the complaint was made by the complainant the same morning.

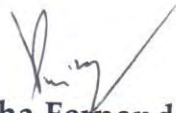
10. The doctor who examined the complainant the same day testified that there were lacerations in the perenal area and contusions on the neck. Her face had been swollen.
11. The doctor opined that the injuries were possibly consistent with rape and the history. He also said that the injuries in the perenal region would have caused by a penis. Swelling on the face may have caused by blunt force trauma and it may be by punching or using a piece of wood, he said. The injuries had happened within 24 hours. Injuries on the neck may have caused by choking or strangulation, he said.
12. The Defence in cross examination of the complainant suggested that the complainant had a fight with others at the night club which she denied. It was also suggested that the complainant consented to sexual intercourse. The complainant had been drunk and she could not remember how she came to Leilani's house.
13. There were some inconsistencies between the complainant's evidence and the statement she had given to the police. The complainant had not mentioned in her statement that she shouted for help. She had not told the police that accused was her cousin and that Kelera who drank with them was accused's girlfriend.
14. I find that the complainant was truthful and straightforward. She was consistent in her evidence. She had immediately complained to the

police. Medical evidence confirms that the complainant had been assaulted and also choked or strangled within 24 hours before the examination.

15. When consider the evidence of the complainant, I find that the above inconsistencies between her evidence and her statement to police will not affect the credibility of the complainant.
16. I find that it was the accused who assaulted the complainant as she testified, and not any other people in the club as suggested by the defence. Although the suggestions to a witness are not evidence unless the witness accepts the same, I find that it was an afterthought by the accused when he said that there was a fight at the night club, to show the injuries caused to the complainant were from that fight. The accused had assaulted and strangled the complainant's neck to shut her up as the complainant testified.
17. In the admitted facts, accused had admitted having sexual intercourse with the complainant. Complainant became unconscious when she was beaten up by the accused. When she woke up her vagina had been paining. Medical evidence confirms that there had been a blunt force trauma that caused injuries to the peneral region. In the above circumstances I find that the accused had sexual intercourse with the complainant without her consent and also he knew or believed that she was not consenting.

18. Hence I find that the prosecution has proved all the elements of Rape and Assault Causing Actual Bodily Harm in counts no. 1 and 2 respectively, beyond reasonable doubt.
19. Therefore the assessors were correct when they opined that the accused was guilty on both counts 1 and 2 as charged.
20. Hence, I agree with the unanimous opinion of the assessors that the accused is guilty of both counts 1 and 2 as charged.
21. Accordingly I convict the accused on both counts 1 and 2.




Priyantha Fernando
Judge

At Suva

02nd June 2016

Solicitors

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