

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 090 OF 2013

BETWEEN : STATE

AND : HARRY MOSES LILO

Counsel : Mr. J. Niudamu for State
Ms. J. Singh for the Accused

Date of Hearing : 1st and 2nd of August 2016

Date of Closing Submissions : 3rd of August 2016

Date of Summing Up : 4th of August 2016

Date of Judgment : 4th of August 2016

JUDGMENT

1. The accused is being charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offence are that;

“Harry Moses Lilo between the 1st day of October 2012 and the 31st day of March 2013, at Rewasa settlement, Rakiraki, in the Western Division penetrated the vagina of Mereoni Kavou, with his penis without her consent”

2. The accused pleaded not guilty, hence the matter was proceeded for hearing. The hearing commenced on 1st of August 2016 and concluded on the 3rd of August 2016. The prosecution adduced the evidence of the victim and tendered the

statement of the aunt of the victim as an exhibit with the consent of the defence. At the conclusion of the case of the prosecution, the accused gave evidence on oath. However, he opted not to call any other witnesses for his defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing submissions, followed by the summing up.

3. The three assessors returned with unanimous opinion of guilt. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having carefully considered the evidence adduced during the hearing, the agreed facts tendered by the parties, respective closing submissions of the counsel, the opinion of the three assessors and the summing up, I now proceed to pronounce the judgment as follows.
5. The prosecution alleges that the accused penetrated his penis into the vagina of the victim without her consent between the 1st day of October 2012 and 31st day of March 2013. Having admitted that he had been engaged in sexual intercourse with the victim during the said period, the accused claims the victim gave her consent for such sexual activities. Hence, the main dispute in this matter is to determine whether the victim gave her consent to the accused to have sexual intercourse with her.
6. Both the parties admitted that the accused first had sexual intercourse with the victim in October 2012 in the kitchen beside the gas stove. The prosecution claims that he forcefully had sexual intercourse with the victim. The accused claims otherwise. The accused in his evidence stated that he talked to the victim

and she consented to have sexual intercourse. It was the first time that he had sexual intercourse with her. However, in his caution interview given to the police, the accused has stated that he first had sexual intercourse with the victim on a mattress in the sitting room. When he was questioned on this inconsistency, he stated that what he stated in evidence on oath is the correct version. Hence, it appears that what he has told the police is not accurate. The accused did not give any reason or explanation for the contradictory nature of his evidence given in the court and the answers given in his caution interview. In that context, it is my opinion that the inconsistent nature of the evidence given in these two circumstances in respect of the first sexual encounter with the victim is fundamental to the main dispute in this matter. In the absence of explanation for such inconsistency, I find it has adversely affected the credibility of the evidence of the accused. Hence, I refuse to accept the evidence given by the accused that the victim gave her consent to have sexual intercourse with him in the kitchen on that particular night in October 2012 as credible and reliable.

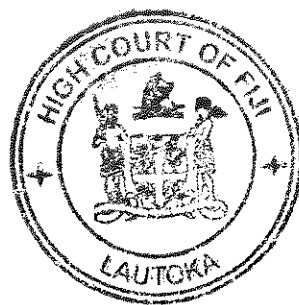
7. The learned counsel for the defence suggested that the delay in complaining this matter to the aunt by the victim makes it less likely that the complaint that she eventually made was true. The evidence adduced by the victim reveals that she had informed her aunt this alleged incident on the 31st of March 2013, that was nearly six months after the first alleged incident took place. The victim in her evidence explained the reasons for not telling her mother as she was not close to her mother and their relationship was very distant. She said that she felt embarrassed to tell anyone in her school about this. Moreover, she was frightened at the accused as he had threatened her that he would kill her if she reveal to anyone else.

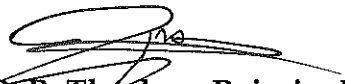
8. I am mindful of the fact that victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the nearest person they see. Others, who react with shame or fear or shock or confusion, do not complain or go to authority for some time. It takes a while for self confidence to reassert itself. A late complaint does not necessarily constitute a false complaint. The victim was 14 years old at the time of this alleged incident took place. It is obvious that this incident has brought a terrifying experience into the life of the victim. Having considered the post-incident behaviors of the victim as explained in her evidence, it is my opinion that the delay of informing her aunt about this incident has not adversely affected the credibility and reliability of the evidence given by the victim.
9. I now turn onto the issue of inconsistency of the evidence given by the victim with her statement made to the police. The victim had not mentioned in her statement that the accused threatened her that he will kill her if she revealed anyone about this incident. However, she has stated in the statement that the accused warned her not to tell anyone. Moreover, it was alleged that she has not stated in detail about the subsequent sexual intercourse that the accused had with her in her statement. Actually, she has stated about the subsequent incidents in the statement but not in much detail. The victim in her evidence explained the reasons for not giving those details in her statement. The victim said that she was frightened and the officer who recorded the statement was a male police officer. That had been the reason for her not to explain in detail about this threatening of the accused and subsequent incidents in her statement.
10. Having considered all the evidence presented during the hearing and the explanation given by the victim, I do not find the inconsistent nature of the

evidence of the victim with her statement made to the police has affected the credibility and reliability of the evidence of the victim.

11. Having considered the forgoing reasons, I find the evidence given by the victim is credible, probable and reliable. Hence, I accept the evidence of the victim as truth. Accordingly I find the evidence given by the accused and his claim that the victim gave her consent to have sexual intercourse is untrue. I do not accept the evidence of the accused person. Furthermore, I find that that the defence has failed to create any reasonable doubt about the case of the prosecution.
12. Accordingly, I do not find any cogent reasons to disregard the unanimous verdict of guilt given by the three assessors. I find the prosecution has proven beyond reasonable doubt that the accused is guilty for this offence as charged
13. In conclusion, I hold that the accused is guilty for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree and convict to the same accordingly.

At Lautoka
4th of August 2016




R. D. R. Thushara Rajasinghe
Judge

Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission