

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 184 OF 2013

STATE

-v-

FUATIA MONISE

Counsel: Ms. R. Uce for State
Accused in Person

Date of Summing Up : 1st September, 2016
Date of Judgment: 20th September, 2016

JUDGMENT

[1] Accused was charged with the following counts and tried before three Assessors.

Count 1

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 22nd day of October 2011, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the breasts of OLIVIA DRAUNA.

Count 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 22nd day of October 2011, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the vagina of OLIVIA DRAUNA.

Count 3

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 01st day of January 2012 and the 31st day of January 2012, at Nadi in the Western Division, unlawfully and indecently assaulted OLIVIA DRAUNA.

Count 4

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 01st day of February 2012 and the 28th day of February 2012 at Lautoka in the Western Division, inserted his penis into the vagina of OLIVIA DRAUNA, without her consent.

- [2] Assessors unanimously found the Accused guilty on all four counts.
- [3] I direct myself in accordance with my own Summing Up and review the evidence led in the trial. I pronounce my judgment as follows.

- [4] Prosecution called two witnesses including the Complainant. At the end of the Prosecution case, Accused elected to give evidence and called two witnesses.
- [5] Accused waived his right to Counsel and legal aid. He, however, exercised his right to cross examine all Prosecution witnesses and challenged their evidence in a coherent manner.
- [6] There is no dispute in this case with regard to the identity of the Accused. It is admitted that the Accused is Complainant's mother's former *de facto* partner.
- [7] Prosecution based its case substantially on the evidence of the Complainant. Prosecution says that, on four occasions, the Accused unlawfully and indecently touched the Complainant's breasts and private area. It also alleges on the 4th count that Accused penetrated the Complainant's vagina with his penis without her consent. Accused does not deny that he was engaged in those conducts. He says that all those incidents took place with the consent of the Complainant. Accused further says that allegations were made up by the Complainant after he reconciled with his wife.
- [8] I am satisfied that the evidence Complainant gave is truthful and believable. Credibility of her version was further bolstered by the evidence of her cousin/namesake Olivia Tavakai whose evidence I consider to be that of recent complaint evidence.
- [9] Accused vigorously challenged the evidence of the Prosecution on the basis that Complainant had failed to complain any of the alleged incidents to anyone at the first available opportunity. Accused argues that the fact that Complainant did not report what had happened as soon as possible makes it less likely that the complaint she eventually made to police was true.
- [10] First alleged incident occurred in 2011 and the last alleged rape incident occurred in February 2013. These incidents had been reported to police on the 11th July 2013. It is true that the Complainant had failed to make a prompt complaint to police at the

earliest opportunity. However, I am satisfied that Complainant had given acceptable and legitimate explanations for the failure.

[11] After the demise of Complainant's father, her mother had been in a very depressed condition. The *de facto* relationship her mother had started shortly afterwards with the Accused had given her mother a new leaf of life. Complainant did not like the relationship. However, she tolerated the relationship as it had helped to keep her mother happy.

[12] Complainant said that she thought about her depressed mother's condition and did not want to hurt her feelings. Accused was aware of Complainant's vulnerable situation. That's one of the reasons that had discouraged the Complainant from complaining against the Accused. Furthermore, Complainant had realized that it was a futile exercise to complain to her mother against the Accused. Complainant's mother had seen the touching incident that had taken place in the Melanesian Hotel and was angry about it. However, she had not taken the incident very seriously. Complainant said it was okay with her mother. After that incident, Complainant's mother had accompanied the Complainant to Accused's workplace to reconcile with the Accused and even invited him to come and live with them again.

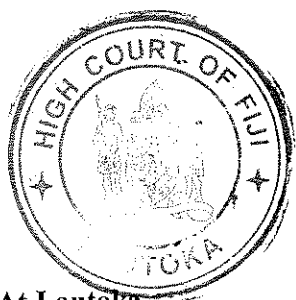
[13] Complainant felt insecure and unsafe in her own home and said that she was scared of the accused as he was around. She was still schooling and concerned about how people would look at her if the matter was exposed.

[14] Complainant had informed the incidents for the first time to her sister-in-law Asena Drauna in May, 2012. However, Complainant was scared and wanted the matter to be kept a secret. Complainant then shared the information with her cousin/namesake Olivia Tavakai sometime in June 2013. Olivia Tavakai had taken the matter very seriously. Tavakai gave evidence and said that she received the information from the Complainant in 2013 and encouraged the Complainant to go to police. However, Complainant did not want the matter to be reported to police and begged her not to do so.


- [15] Eventually, after several efforts, Tavakai managed to convince the Complainant to go to police. Complainant had finally realized that the damage had been done to her and it was the right thing to complain to police. Complainant explained what made her change her mind in 2013 to report the matter to police. Her namesake/cousin encouraged her to report it. Eventually, she thought it was the right thing to do. By that time, she didn't really care what people think. Her namesake even assured her that the report will be confidential. With that assurance, her namesake pushed her to report the matter to Police. That is how the Accused was finally brought to book.
- [16] Accused says that Complainant's evidence is not consistent with her statement to police. He also says that her evidence is not consistent with that of her cousin Olivia Tavakai. I do not find the so called inconsistencies to be material contradictions that would affect the credibility of Complainant's evidence.
- [17] Accused also says that Complainant made up this case against him when she realized that he had reconciled with his wife in 2013. Complainant completely denied having made up a story. Accused called his wife and daughter to support his version that Complainant had a relationship with him and she kept on coming to him. According to Accused's version Complainant had paid several visits to his place. However, Accused failed to put his version to the Complainant when she was in the witness box. The witnesses called by the Accused were not independent witnesses. They had a strong motive to save skin of the Accused. I do not find any valid reason or motive on the part of the Complainant to fabricate a series of allegations against the accused.
- [18] I watched Complainant giving evidence in court. She was straightforward and not evasive. Her demeanor is consistent with her honesty.
- [19] Accused failed to maintain consistency in his evidence. He contradicted himself when he was asked about his visits to Complainant's house before he moved to her place. Accused was evasive and not straightforward. Version of Defence failed to establish a reasonable doubt in the prosecution case.
- [20] Complainant said that Accused touched (over the clothes) her breasts and private part on four occasions. Accused did not deny that he touched her breasts and private area

although he was not sure about the exact dates. Touching of a girl's private part and breasts constitutes an indecent assault. She also said that Accused having pulled her panty forcefully penetrated his penis into her vagina. He also punched on her thigh. I am satisfied that the sexual intercourse was not consensual.

- [21] Prosecution discharged its burden and proved each element of each count beyond reasonable doubt.
- [22] I accept the unanimous opinion of assessors which was available in evidence led in trial. I find the Accused guilty on all counts and convict him accordingly.
- [23] That is the judgment of this Court.



At Lautoka
20th September, 2016


Aruna Aluthge
Judge

**Solicitors: Office of the Director of Public Prosecution for State
Accused in Person**