

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 142 of 2013

STATE

V

ILIESA RAGIGIA

Counsel : Mr. A. Singh for the State.
: Ms. L. Vateitei for the Accused.

Dates of Hearing : 19, 23, 25 May, 2017
Closing Speeches : 29 May, 2017
Date of Summing Up : 30 May, 2017
Date of Judgment : 31 May, 2017

JUDGMENT

[The name of the second prosecution witness is suppressed she will be referred to as "AB".]

[1] The Director of Public Prosecutions charged the accused by filing the following information:

FIRST COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (c) of the Crimes Act 2009.

Particulars of Offence

ILIESA RAGIGIA on the 1st day of July, 2013, at **NADI** in the **WESTERN DIVISION**, used his penis to penetrate the mouth of **TEMALESI BULIVOU**, without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

Particulars of Offence

ILIESA RAGIGIA, on the 1st day of July, 2013 at **NADI** in the **WESTERN DIVISION**, used his penis to penetrate the vagina of **TEMALESI BULIVOU**, without her consent.

- [2] The three assessors had returned with a unanimous opinion that the accused was guilty as charged.
- [3] I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
- [4] The prosecution called three witnesses while the accused opted to remain silent but called two witnesses.
- [5] On the evidence before the court it was open to the assessors to reach such a conclusion.
- [6] The complainant gave evidence that on 1st July, 2013 at about 1pm after hanging the accused children's clothes she saw the accused standing near his bathroom wearing a blue and white stripe towel without a t-shirt.

- [7] The accused pulled both the complainant's hands and pulled her into the bathroom. The complainant said that she begged the accused by saying in the itaukei language "*tau kerekere*" meaning for the accused to stop what he was doing.
- [8] In the bathroom, the accused opened his towel and forced his penis into the complainant's mouth for 10 minutes. At this time the complainant was struggling with the accused, crying and the accused was pushing her hands away. The complainant did not shout because she was frightened and afraid that the accused would do something to her.
- [9] After putting on his towel the accused dragged the complainant to his bedroom by holding her hand tightly. At this time the complainant was crying and afraid but she did not shout as she was feeling weak.
- [10] In the bedroom the accused locked the door and told her not to shout, the accused pulled the complainant towards him and then pushed her to the floor. The complainant was wearing pink top and long pants. The accused was trying to take out her top, the complainant was struggling to push the accused away but he kept on pulling her hand. The accused managed to pull her top up the complainant kept on crying and begging him to stop. To cover her body the complainant sat on the floor with her legs crossed. The accused was able to remove her pants and her top.
- [11] The accused then forced his penis into the complainant's vagina for 30 minutes. When the accused was penetrating the vagina of the complainant he asked the complainant twice if she had reached orgasm the complainant replied yes so that he would leave her, after a while she felt wetness inside her.

- [12] After this the accused stood up put on his towel and went away. The complainant put on her clothes and ran outside the bedroom crying. On her way out she met "AB" who asked the complainant what happened in reply the complainant said "nothing".
- [13] At her house the complainant was crying waiting for her husband she saw her brother Bale and called him. She informed Bale that the accused had done something to her. The reason why she did not tell her brother in detail about what the accused had done to her was because she was ashamed. The matter was reported to the Police the next day.
- [14] The next witness for the prosecution was "AB" who informed the court that she was playing in front of the house with her other siblings when her father called her to give him soap.
- [15] When the witness gave the soap to her father he was in the bathroom at this time the witness did not know where Temalesi was.
- [16] After sometime "AB" was near the kitchen she saw Temalesi and her father coming out of the bedroom. The witness saw Temalesi crying and she asked her what had happened, Temalesi kept on crying and didn't say anything. Thereafter Temalesi served food to everyone and sat beside her father.
- [17] The final prosecution witness Pajilai Bale informed the court after he returned from Town the complainant called him from her house.
- [18] The witness went to the complainant's house and asked her what had happened to her. The complainant replied that the accused had touched her. The witness saw the complainant was crying who showed him red marks on her arm. The complainant told him that

the accused had caused those marks when he had pulled her into the house.

[19] The accused on the other hand says that he had penetrated the mouth and the vagina of the complainant with his penis but with her consent.

[20] The first defence witness Solomoni Cavu Lotawa informed the court that he is a friend and neighbour of the accused. His observations of the behaviour of the complainant and the accused made this witness suspect that the complainant and the accused were having an affair. Solomoni also noticed that the complainant had familiarized herself with the accused's house and they used to drink together. When the wife of the accused was not around the complainant was very confident in being beside the accused when drinking together.

[21] The second witness for the defence was Doctor Vineet Vijay Chand, who had examined the complainant on 2nd July, 2013. The history noted by the Doctor of what the complainant had narrated to him was at D (10) of the Medical Examination Form as follows:

“Raped by landlord yesterday after 1pm. Forced by grabbing hands and then raped. Victim washed her private parts after rape happened.”

[22] The Professional Opinion of the Doctor at D(14) of the Medical Examination Form was that there was a history of sexual assault and rape.

[23] I accept the evidence of the complainant as truthful and reliable. The complainant was able to recall what had happened to her and was forthright in her evidence. The complainant was also able to withstand cross examination. I have no doubt in my mind that the

complainant told the truth in court. Her demeanour was consistent with her honesty.

- [24] The fact that the complainant did not shout or scream for help or tell the daughter of the accused anything whilst coming out of the accused's bedroom does not in any way affect the reliability of the complainant's evidence. The circumstances that prevailed at that time was in my view consistent with the complainant's reaction.
- [25] When the complainant went home she told her brother Pajilai Bale that the accused had done something to her since she was ashamed she did not tell her brother everything in detail. The complainant also reported the matter to the Police promptly that is next day of the alleged incident.
- [26] I accept the evidence of "AB" to the extent that this witness saw the complainant and her father coming out of the bedroom and that "AB" had asked the complainant what had happened when she saw the complainant crying. I reject the evidence of "AB" thereafter as unreliable which was tailored to protect the accused, this was very obvious to me from her demeanour in court.
- [27] The final witness for the prosecution Pajilai Bale was also a truthful and reliable witness. He saw the complainant crying and had also seen red marks on the arm of the complainant.
- [28] The fact that Pajilai did not tell the Police about red marks on the arm of the complainant when he gave his police statement was insignificant to cast any doubt on his evidence.

[29] I also accept the Professional Opinion of the Doctor that there was a history of sexual assault and rape which was consistent with the history narrated by the victim.


[30] I reject the evidence of defence witness Solomoni Cavu Lotawa as unreliable in respect of his observations and suspicion that the complainant and the accused were in a relationship. It was obvious to me from the demeanour of this witness that he was trying to save his friend.

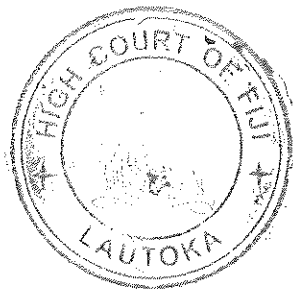
[31] I am satisfied beyond reasonable doubt that the accused on 1st day of July, 2013 penetrated the mouth and vagina of the complainant with his penis without her consent.

[32] I also accept that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.

[33] I agree with the unanimous opinion of the assessors. In view of the above I find the accused guilty as charged for two counts of rape and I convict him accordingly.

[34] This is the Judgment of the Court.


Sunil Sharma
Judge



At Lautoka

31 May, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

M/s. Asta's Law for the Accused.