

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 246 of 2015

STATE

v.

ADHI NARAYAN NAIDU

Counsel: Ms. E. Samisoni for State
Ms. N. Mishra for Accused

Hearing: 30th to 31st October 2017

Summing Up: 2nd November 2017

Judgment: 2nd November 2017

JUDGMENT

1. The accused had been charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act. The particulars of the offence are that:

Statement of Offence

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

Particulars of Offence

ADHI NARAYAN NAIDU on 25th June, 2015 at Nasinu in the Central Division, penetrated the vagina of **ILAITE VAKALOLOMA**, with his finger, without her consent.


2. The accused pleaded not guilty for this offence. Accordingly, the matter proceeded to hearing. The hearing commenced on the 30th of October 2017 and concluded on the 31st of October 2017. The Prosecution only adduced the evidence of the complainant. The accused gave evidence for the defence, but did not call any other witness for his defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered the summing up.
3. The three assessors in their unanimous opinions found the accused is not guilty for the offence.
4. Having carefully considered the evidence adduced by the prosecution and the defence, the closing addresses of the learned counsel, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
5. The complainant claims that the accused penetrated her vagina with his finger without her consent, while he was massaging her stomach on the 25th of June 2015. In contrast, the accused claims that he only massaged the complainant's stomach as she requested. This alleged incident has taken place in private between the accused and the complainant.
6. The learned counsel for the defence suggested in her closing address that the six days of delay in reporting this matter makes it less likely that the complaint that she eventually made was true. Moreover, the defence adduced evidence to establish that the complainant actually went to police station to report this matter after her cousin/brother-in-law assaulted the accused on the 1st of July 2015.
7. The complainant in her evidence said that she did not have enough strength to go and report the matter to the police on the 25th of June 2015. The complainant had finally reported this incident on the 1st of July 2015. The prosecution and the defence did not dispute that there was a fight between the accused and the cousin of the complainant on the 1st of July 2015. It has taken place before the complainant went and made this report to the police. The accused in his evidence said that he went to police station before the

complainant did, but the police directed him to the medical center instead of recording his complaint. While the accused was attending for his medical report, the complainant had come and lodged this complaint with the police.

8. The complainant in her evidence initially said that her cousin came on the 1st of July 2015 to take her to his place as she was scared of staying at her home. However, the complainant during the cross examination said that the cousin came to help her to go to the police station. Hence, it appears that the complainant in her evidence has given two reasons for the presence of her cousin at her place on the 1st of July 2015, creating a reasonable doubt whether she lodged this complaint due to the fight that her cousin had with the accused or not.
9. Moreover, the complainant in her evidence said that she went to police station before the accused came. Hence, it appears that the complainant has not disputed the fact that the accused also came to the police station on the 1st of July 2015.
10. The complainant in her evidence said that she resisted when the accused allegedly tried to suck her breast and penetrated her vagina with his fingers. She had tried to push his hand away with some force. However, she said that she had no strength to shout for assistance as she was weak. While the accused was allegedly penetrating her vagina with his fingers, her husband came and parked the car, just few meters away from the scene of the crime. The accused stood up and walked out without saying anything. According to the evidence given by the complainant, she had lifted her upper garment up for the accused to massage. She had put her dress down when the accused left and husband came into the house. Would it possible that her husband failed to notice that it was strange when the complainant was lying, lifting her top dress up and the accused walked out without saying anything. The complainant in her evidence did not explain whether she told her husband about this alleged crime at the same time, or not. If she did not tell her husband at that time, what were the reasons that she decided not to tell her husband?

11. In view of the above reasons together with the delay of six days in reporting this matter and the circumstances under which the complaint was made to the police by the complainant. I find that there is a reasonable doubt about the credibility and reliability of the evidence given by the complainant.
12. Accordingly, I find that the prosecution has failed to prove that the accused has committed this offence of rape as charged beyond reasonable doubt. Hence, I do not find any cogent reasons to disregard the unanimous opinion of not guilty given by the three assessors.
13. In conclusion, I hold that the accused is not guilty for this offence of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and acquit him accordingly.
14. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
2nd November 2017

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