

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 181 of 2015

STATE

V

SAULA VASU

Counsel : Mr. S. Seruvatu for the State.
: Ms. V. Narara for the Accused.

Dates of Hearing : 5, 9 November, 2018
Closing Speeches : 9 November, 2018
Date of Summing Up : 9 November, 2018
Date of Judgment : 12 November, 2018

JUDGMENT

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) (a) of the Crimes Act 2009.

Particulars of Offence

SAULA VASU, on the 2nd day of November, 2015 at Nadi, in the Western Division, penetrated the vagina of **TALEI SENIROSI** with his penis, 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

SAULA VASU, on the 2nd day of November, 2015 at Nadi, in the Western Division, penetrated the anus of **TALEI SENIROSI** with his penis, without her consent.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of both counts of rape.
3. I adjourned to consider my judgment. I direct myself in accordance with the summing up and the evidence adduced at trial.
4. The prosecution called three witnesses and the defence called one witness after the accused exercised his right to silence.
5. The complainant informed the court that on Sunday 1st November, 2015 at about 11.00pm she met her uncle Jolame at the 'Ice Bar' Night Club. She joined her uncle who was drinking with one of his friend's from Vanuatu.
6. At about 1.00am the next morning the complainant's uncle asked her to accompany his friend to the Martintar Hotel to help him pack his luggage for his flight the next morning. The complainant obliged.
7. On the way to the hotel three cans of Woodstock beer were purchased. In the hotel room the door was left open the complainant continued drinking alone. The complainant finished two cans of beer at this time she saw a man going past the room.

8. The complainant called out and asked this man the accused to join her. She did not know the accused both started to drink the third can of beer. After the beer finished some more beer was purchased.
9. After purchasing seven cans of beer the complainant returned to the hotel room she saw the accused and his wife in the room. As the drinking continued the complainant started feeling drunk she does not know where the accused's wife went to.
10. After a while the accused told the complainant that he wanted her. The complainant replied that can't be since his wife was around. The accused upon hearing this punched her, she stood up and went outside the room the accused came and pulled her neck from behind and forcefully took her to his room which was room no. 4.
11. The complainant did not want to go into the room so she pushed him but the accused managed to pull her into his room. In the room the accused pushed the complainant on the bed and pushed her down. The accused pulled up the complainant's dress, she was screaming for help and pushing the accused he then locked the door of the room.
12. After pulling down her under wear the accused had sexual intercourse with the complainant. The complainant did not consent to what the accused had done to her. According to the complainant she was turning, twisting and screaming for help and pushing the accused at the same time.
13. The accused held the complainant's throat with one hand and with the other blocked her mouth. As the complainant was trying to free herself the accused turned her around, pulled her bra and then inserted his penis into her anus. The complainant was crying and calling for help. She did not consent to what the accused had done to her.

14. The accused took the complainant to the bathroom here she was able to free herself and run out of the room. The accused also ran after her. At the hotel reception the police came and arrested the accused.
15. The complainant after giving her police statement was taken to the hospital for a medical examination the same day. The complainant identified the accused in court.
16. The second prosecution witness was Police Constable Akuila Maki on 2 November, 2015 in the early hours of the morning while returning after attending to a report at Martintar the witness saw a crowd gathered outside Hotel Martintar. The witness went to check, he saw the accused at the drive way of the Hotel, the accused told him a lady had stolen his phone.
17. The accused took the witness to room no. 3 where they were drinking. In this room the witness saw empty cans of beer and some blood stains on the bed sheets. From there the witness was taken to room no. 4, he saw the room was not in order, the bed sheet was in a mess, which had some blood stains, also some blood stains were on the floor with a lady's bra.
18. According to the witness he noticed there were signs of struggle in the room because the bed was not in order and the blood stains were like a splash not droplets.
19. The accused stated that the lady who had stolen his phone was at the reception. At the reception the complainant told him that the accused had raped her. By this time police officers from Namaka Police Station arrived and the accused was handed over to them.
20. The final prosecution witness was Dr. Salma Sandhya. She graduated with a MBBS degree from the University of Fiji in the year 2013, she did her

internship at the Lautoka Hospital in the year 2014. Dr. Sandhya has served the Nadi Hospital for 2 years and is currently working at the Lautoka Hospital.

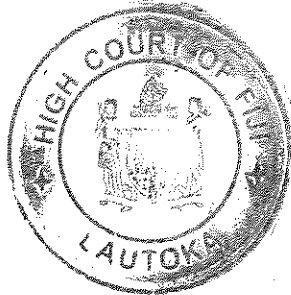
21. The witness recalled examining the complainant on 2nd November, 2015. The Fiji Police Medical Examination Form of the complainant was marked and tendered as prosecution exhibit no.1.
22. The specific medical findings of the doctor were:-
 - (a) The patient had vaginal tears on the vaginal opening that is the introitus; and
 - (b) She also saw anal tears.
23. The professional opinion of the doctor was that there was evidence of forceful vaginal and anal penetration.
24. The accused exercised his right to silence defence called one witness. Taraivosa Baleisuva informed the court that she had come to Nadi on the 1st November, 2015 with the accused in the afternoon. Both checked in at Martintar Hotel when she woke up the next morning she could hear noise coming from another room. When she went to check she saw the accused with a girl and another man drinking beer. The witness also joined them. After a while the other man left the room.
25. Shortly after the accused and the girl started to argue with each other, the accused was asking about his phone. The girl replied she did not know. During the argument the accused punched the witness on her nose, blood started coming out and she blacked out. The blood had spilled on the bed since at this time she was standing near the bed.

26. After regaining consciousness the witness went to the bathroom to wash her face which took a while, by the time she came out of the bathroom the accused and the girl were not in the room. When she came out of the room she heard the accused and the girl fighting in her room. The witness went and knocked on the door which was locked so the witness went to the reception to get the receptionist again she knocked on the door but it was locked.
27. The witness heard the accused asking for his phone the argument was loud both were shouting at each other the accused was asking for his phone and the girl was saying she did not know. The witness got scared she also heard the accused saying take off your under garments what's there.
28. The witness saw the accused and the girl standing in the room through the glass door since the curtains were open. The witness left with the receptionist and called the police.
29. I accept the evidence of the complainant as truthful and reliable I have no doubt in my mind that the complainant told the truth in court. I also noticed her demeanour was consistent with her honesty.
30. During cross examination the complainant was not shaken she was able to answer the questions in a forthright manner. Dr. Sandhya who had examined the complainant had observed vaginal and anal tears the professional opinion of the doctor was that there was evidence of forceful vaginal and anal penetration.
31. Police Constable Akuila Maki who had visited the crime scene immediately after the alleged offending informed the court what he had seen and was able to give a clear description.

32. I have no reason to doubt the evidence of all the prosecution witnesses they were truthful and reliable.
33. In regards to the evidence of Taraivosa Baleisuva called by the defence I am unable to understand the relevance of this witness's evidence to the defence raised. This witness did not see what was happening inside the room except for the accused and the girl standing in the room arguing with each other before she went and called the police.
34. I find it unbelievable and unacceptable that the accused whilst arguing with the complainant would have punched Taraivosa without any reason. I also reject the evidence of this witness that blood from her nose had spilled on the bed sheet, if the injuries were so serious she would have lodged a police complaint when she went to Namaka Police Station with the police officers. I am sure the extent of injury suffered would have no doubt required medical attention but the witness did not go to the hospital from the police station but went to Suva instead.
35. The defence has not been able to create a reasonable doubt in the prosecution's case in respect of both the counts.
36. I am satisfied beyond reasonable doubt that on the 2nd day of November, 2015 the accused had penetrated the vagina and the anus of the complainant with his penis without her consent.
37. I also accept that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
38. I agree with the unanimous opinion of the assessors that the accused is guilty of both the counts of rape.

39. In view of the above, I find the accused guilty as charged and I convict him of both counts of rape.

40. This is the judgment of the court.



A handwritten signature in black ink, appearing to read "Sunil Sharma".

Sunil Sharma
Judge

At Lautoka

12 November, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.