

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 60 of 2015

STATE

V

- 1. INIA NAQIA**
- 2. MAIKELI SAUKURU**

Counsel : Ms. S. Kiran for the State.
: Ms. V. Diroiroi for the first Accused.
: Ms. J. Manueli for the second Accused.

Dates of Hearing : 16, 20, 21, 22 November, 2018
Closing Speeches : 23 November, 2018
Date of Summing Up : 27 November, 2018
Date of Judgment : 28 November, 2018

JUDGMENT

1. The Director of Public Prosecutions charged both the accused persons 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

INIA NAQIA on the 3rd day of April, 2015 at Nadi in the Western Division penetrated the vagina of **ANI TINAI**, with his penis, without the consent of the said **ANI TINAI**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

MAIKELI SAUKURU on the 3rd day of April, 2015 at Nadi in the Western Division penetrated the vagina of **ANI TINAI**, with his penis, without the consent of the said **ANI TINAI**.

2. The three assessors had returned with a unanimous opinion that both the accused persons were not guilty of rape.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with the summing up, the redirection and the evidence adduced at trial.
4. The prosecution called 2 witnesses, the first accused gave sworn evidence and called one witness and the second accused gave sworn evidence.
5. The complainant informed the court on 3rd April, 2015 she was drinking alcohol with both the accused persons and one Pio Namai in the early hours of the morning at the back of a dairy shop near Saunaka Village.
6. The complainant knew both the accused persons, the drinking finished after 9am that morning. The complainant went to the nearby sugar cane field to relieve herself since she was really drunk she blacked out. When she

regained consciousness both the accused persons were holding her tight so that she would stay still.

7. They removed her clothes, the first accused Inia started to touch all over her body while the second accused forcefully started kissing her mouth, in order to stop him she bit his lips.
8. Both the accused persons then took turns in having sexual intercourse with her by penetrating her vagina with their penis. The first accused had sexual intercourse first followed by the second accused. The complainant did not allow any of the accused persons to have sexual intercourse with her. She also remembered calling the name of her ex-boyfriend so that they would stop but they did not. This made the complainant angry, a sense of regret and loss of self-esteem came over her.
9. After the accused persons left the complainant walked to Saunaka Village, it took her about 1 ½ to 2 hours to reach the village. At the village the complainant went to the house of her friend Solomoni Qurai and asked him to take her to the Police Station.
10. Solomoni had seen the love bites on her neck and had asked her the reason for going to the Police Station. She told him about what both the accused persons had done to her when she was drinking with them in particular after being blacked out and waking up.
11. Solomoni Qurai informed the court that at about 3pm the complainant came to ask for his help in taking her to the Police Station.
12. The complainant told the witness that she was forcefully held and raped by Maikeli and Inia. The witness observed the complainant was not in good condition particularly her appearance that is her face and hair. The witness felt sorry for the complainant.

13. The witness took the complainant to the Police Station in his vehicle after 3pm that day he knows the two accused persons, Inia the first accused is his cousin and Maikeli the second accused is his nephew.
14. The first accused informed the court that at about 3am the complainant, the second accused and Namai came to the dairy shop where he was drinking rum and cola. All went to the back of the shop after 6 or 7 cans of Woodstock beer was purchased.
15. After a while more beer was purchased. During the drinking session nothing happened all were having fun. The accused knew the complainant the drinking ended after 6am. After 6am but before 7am he left for home at this time the complainant and the second accused Maikeli were drinking. There were about 7 others drinking at a spot beside them.
16. The accused took short cuts and reached home at around 7am. His mum was cooking he went straight to bed waking up in the afternoon at about 4pm to 5pm. When he woke up he was informed by his mother that the complainant blamed him and Maikeli for rape.
17. Upon hearing this, the accused ran to the house of the complainant to see her but she was not at home so the accused went to see Maikeli and told him what he had heard.
18. The police did not come that day so the accused went to the Police Station the next day he was told it was a public holiday so he went on Tuesday. Before going to the Police Station the accused did not meet the complainant he does not know why the complainant had made this allegation against him.
19. Vikaili Kuaso the mother of the first accused informed the court that in the morning of 3rd April, 2015 the witness was boiling tea when she saw Inia coming home just before 7am. He went straight to sleep and woke up at

around 5pm when the witness checked on the first accused at about 9am or 10am he was asleep.

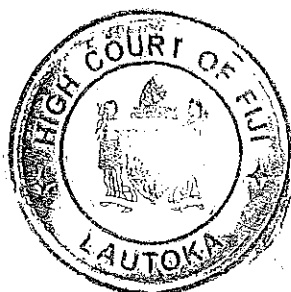
20. The second accused informed the court on 2nd April, 2015 he was drinking grog at his neighbour's house, late in the night he was invited by the complainant to go with her for a wash down. He knows the complainant since she was staying at his aunt's house.
21. The complainant, Namai and the accused went to the dairy shop it was here they were joined by the first accused Inia. All of them went behind the dairy shop to drink. The accused was unable to remember the time the drinking started and the time it ended.
22. According to the accused they were drinking and having fun after a while more beer was purchased. Just before beer was bought by Namai for the third time the first accused Inia said that he was about to leave. At this time it was early in the morning about 6.30am to 7am the accused asked the complainant to accompany him home.
23. The complainant did not agree she went and joined the other group drinking nearby. When the accused left for home no one from his group was there. He walked home but does not remember the time he arrived home, after eating he went to bed waking up around lunch time.
24. While watching movies at home in the afternoon the accused heard the complainant shouting at the village gate saying "*Inia, Maikeli police today*". Upon hearing this, the accused told his elder sister to go and get the complainant into the house. By this time the complainant went to the house of Solomoni Qurai he was not in good terms with Solomoni. At this time the complainant was wearing a sulu only. When he had left the complainant she was not that drunk he does not know the reason why the complainant had made such an allegation against him.

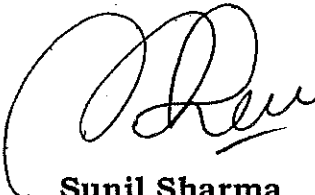
25. I accept the evidence of both the prosecution witnesses as truthful and reliable. The complainant was able to recall and describe what both the accused persons had done to her. The complainant knew both the accused persons and was able to identify them.
26. The complainant was not shaken or discredited during cross examination she gave straight forward answers and was not evasive. Solomoni Qurai was also a reliable and truthful witness he gave a coherent account of what the complainant had told him.
27. I do not accept the evidence of the second accused that he had a bad relationship with Solomoni. This witness was not cross examined about this issue when he was giving evidence. In any event the evidence given by Solomoni was what he had been told by the complainant. The evidence of this witness does not suggest any iota of enmity or bad relationship between him and the second accused. I have no doubt in my mind both the prosecution witnesses told the truth in court. The complainant had also promptly reported the matter to the police for investigation. The second accused in his evidence told the court the complainant was shouting at the village gate saying "Inia, Maikeli police today" on the day of the incident before going to the house of Solomoni.
28. On the other hand, both the accused persons did not tell the truth in court their demeanour was not consistent with their honesty. They were careful in narrating their evidence and in answering questions during cross examination they were not forthright. In cross examination of the complainant none of the accused persons had cross examined her that she had joined the group which was drinking nearby yet the second accused in his evidence said the complainant went to join the other group before he left for home.
29. The first accused said after 6am but before 7am he left the drinking party for home at Saunaka Village by taking short cuts he reached home around

7am. The complainant said it took her 1 ½ to 2 hours to go to the same village. Again none of the accused persons in cross examination of the complainant had disputed this aspect of the complainant's evidence. I reject the evidence of the first accused in this regard as well.

30. The mother of the first accused did not tell the truth about the time her son came home that morning. In her evidence the witness said her son had come home just before 7am and to the police she had said he came home between 6am and 6.30am. In cross examination she said her son had come home twenty minutes before 7 in the morning. Taking into account the different timing mentioned by this witness, I reject her evidence in respect of the time she told the court her son came home and was sleeping at home.
31. Moreover, before coming to court the witness had discussed about the case with her son.
32. It was obvious to me that the accused persons were making up a story to hide the truth. It was not the time of the alleged rape that was crucial but whether what was alleged had happened as stated by the complainant. Considering the circumstances of the complainant the timing of the alleged rape does not create any doubt on the credibility of the complainant's evidence.
33. Furthermore, there was no suggestion of any motivation on the part of the complainant to implicate both the accused persons.
34. I reject the defence of both the accused persons as unbelievable and unreliable. Both the accused persons were at the alleged crime scene as mentioned by the complainant the prosecution has disproved the defence of alibi raised by the second accused.

35. The defence put forward by both the accused persons has not been able to create a reasonable doubt in the prosecution case.
36. I am satisfied beyond reasonable doubt that both the accused persons on 3rd April, 2015 had penetrated the vagina of the complainant with their penis without her consent.
37. I also accept that both the accused persons knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
38. In view of the above, I overturn the unanimous opinion of the assessors that both the accused persons are not guilty of rape.
39. I find both the accused persons guilty as charged and I convict both of them for one count of rape each.
40. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka
28 November, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for Accused 1 and 2.