

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 39 of 2017

THE STATE

V

ULIANO SAMUNAKA

Counsels: Mrs. A. Vavadakua for the State
Ms. L. Boseiwaqa (L.A.C.) with Mr. U. Koroi
for the Accused

Date of Trial: 16, 17 August 2018

Date of Summing Up: 17 August 2018

Date of Judgment: 17 August 2018

JUDGMENT

1. After trial in this Court on one count of digital rape, three assessors returned with unanimous opinions of guilty.
2. The facts elicited at trial were that at about 2am on the 23rd July 2017 a married lady who will be referred to as Kate for the purposes of this judgment awoke in pain. Her husband was away for the night but she felt somebody on top of her sexually assaulting her. She immediately recognized the accused whom she had known in the village for 14 years, as her abuser. She tried to shout but he blocked her mouth to stop her. He invaded her with his fingers while kissing her on the mouth. Kate

struggled to evade him and the accused punched her twice on her inner thigh in an attempt to spread her legs. He was unsuccessful and then left her bedroom. She was able to confirm his identity when she saw him in the kitchen when he was on his way out of the house. She then shouted and alerted a young relative who was sleeping in the lounge to go and try to locate the assailant. The boy was unable to do so.

Prosecution Case

3. The State called Kate, the victim who gave evidence in accordance with the above facts.
4. The Medical Officer who examined her the following day noted the bruised thigh and opined that the two injuries were inflicted by impact with a blunt object. The injuries were consistent with punching.

Defence Case

5. The accused gave evidence to say that he is 27, a farmer and contract rugby player and he lives in the same village as Kate and knows her. The night before the assault he drank grog with friends until about 11pm when they went to an abandoned house in a settlement nearby to drink home brew. At one stage the accused became involved in a physical fight with another. A considerable amount of home brew was drunk and he and one friend left to walk back to the village. The accused said that he was very drunk but he knew what he was doing. He and the friend stayed in the home of a third man (Kolinio) because, he said, he didn't want his family to see him so drunk.
6. The accused denied ever going to Kate's house that night - he said he was sleeping all night at Kolinio's house. When he heard

that he was being accused, he just laughed because he had travelled the world with rugby and had been with some beautiful women.

7. The accused called two alibi witnesses, who gave evidence mostly but not entirely in accordance with his evidence as to his movements and whereabouts that night.
8. The fourth witness for the defence was the young relative staying in Kate's house that night and who attended on her when she shouted after the sexual abuse. He told of her abnormal demeanour and his unsuccessful attempt to locate the culprit outside. He said that Kate didn't tell him who her attacker was but said he was big and well-built like the accused or Makama.

Analysis

9. The victim, Kate gave evidence which was consistent, honest and convincing. She was unshaken in cross-examination. She told of her shock and fear and her reaction in the absence of her husband not to immediately name her attacker is understandable. The medical evidence confirms her evidence of violence used on her.
10. The Court believed her evidence.
11. The accused was arrogant and evasive. He was more than happy to tell the Court how much he could drink that night and how he could beat another man in the drunken fight at the home brew house but when telling of his movements once he was back in the village he was talking with much less bravado and with less certainty.

12. As a result I believed his evidence about his deeds early on in the evening drinking grog leading up to the home brew "session" and the physical fight, but I was less convinced by his evidence as to his whereabouts on return to the village.
13. His alibi witnesses were far from helpful to him. The first one (Sakaraia) had clearly been coached in his evidence. He failed in the details and was definitely unable to account for the accused's whereabouts for the entire night.
14. The second alibi witness (Kolinio) was totally unhelpful. He told the Court that although the accused stayed in his house, he (Kolinio) was asleep all night and would not have known if the accused was absent for some time in the night.
15. I find that the State has disproved the alibi relied on.
16. None of the defence witnesses, including the accused said anything to make me doubt the evidence of the victim and it is for that reason I find that the State has proved its case against the accused for rape beyond reasonable doubt.
17. I accept and agree with the assessors' opinions and find the accused guilty. He is convicted of the count of digital rape.
18. That is the judgment of the Court.


P. K. Madigan

Judge



At Labasa

17 August 2018