

IN THE HIGH COURT OF FIJI AT LABASA

CASE NO: HAC 05 of 2018

[CRIMINAL JURISDICTION]

STATE

V

ISIMELI LEVUIMATA

Counsel : Ms. A. Vavadakua for State
Mr. H. Robinson for Accused

Hearing on : 04 - 05 March 2019

Summing up on : 05 March 2019

Judgment on : 06 March 2019

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

Rape: contrary to section 207(1) and (2)(b) of the Crimes Act 2009.


Particulars of Offence

ISIMELI LEVUIMATA on the 14th day of January 2018, at Nakanacagi Village, in Dreketi in the Northern Division, penetrated the vagina of Motea Batitaukei, with his finger, without her consent.

2. The assessors have returned with a divided opinion. One assessor found the accused not guilty as charged. The majority opinion is that the accused is guilty of the above offence.
3. I direct myself in accordance with the summing up delivered to the assessors on 05/03/19 and the evidence adduced during the trial.
4. In my judgment, the account given by the complainant is not plausible. According to the complainant's evidence, she was wearing her church dress and an ankle-length skirt [admitted fact number 5] when she jumped into the water with the accused. There was no explanation in her evidence as to where her undergarments were when the accused allegedly inserted his finger inside her vagina.
5. There is a doubt in my mind whether it would be possible to insert a finger inside the complainant's vagina while she was struggling to come out of the water by moving her arms and her legs in the manner the complainant recounted, especially if she was wearing the clothes as mentioned above.
6. Further, the complainant admitted that she had told the police that she shouted when the accused did not leave after she told him to leave. According to her evidence-in-chief, she did not shout at any point of time during her encounter with the accused. There was no explanation offered for this inconsistency which I consider to be material in assessing whether the complainant was a credible witness.

7. Only the accused and the complainant know what exactly took place when they were in the water and I am not convinced that either the complainant or the accused had given a true account regarding the alleged incident.
8. The evidence led in this case suggests that the complainant's vagina may have been penetrated at the material time by the accused, but not in the manner the complainant explained. Being a married man, what the accused may have done to the complainant is morally wrong. However, a criminal charge should be proved beyond reasonable doubt. The infirmities in the complainant's evidence raises a reasonable doubt and the accused should be given the benefit of that doubt according to law.
9. Therefore, I have concluded that the evidence in this case does not establish the offence of rape.
10. For the reasons given above, I am unable to agree with the majority opinion of the assessors.
11. I find the accused not guilty of the offence of rape and I hereby acquit the accused accordingly.




Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Tadrau Legal, Labasa for the Accused