

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**Criminal Case No. HAC 224 of 2017[LTK]**

**BETWEEN** : STATE

**AND** : SHANEIL REDDY

**Counsel** : Mr S Seruvatu for the State  
Ms L David for the Accused

**Dates of Hearing** : 18 – 20 March 2019

**Date of Judgment** : 26 March 2019

**JUDGMENT**

[1] The Accused is charged with two counts of rape and one count of theft. Following my summing up, the majority opinion of the assessors is that the Accused is guilty of the two charges of rape and the unanimous opinion is that he is guilty of the charge of theft. The verdict is of the Court. I now pronounce my judgment.

[2] On count one, the Accused is charged with unlawful sexual intercourse with the complainant without her consent. The elements of this offence are:

1. The Accused had unlawful sexual intercourse with the complainant, that is, he penetrated her vagina with his penis.
2. The complainant did not consent to sexual intercourse.
3. The Accused knew the complainant did not consent.

[3] On count two, the Accused is charged with unlawful fellatio. The elements of this offence are:

1. The Accused penetrated the complainant's mouth with his penis.
2. The complainant did not consent to the penetration of her mouth.
3. The Accused knew the complainant did not consent.

[4] On count three, the Accused is charged with theft. The elements are:

1. That the property must belong to someone other than the Accused.
2. It must be appropriated, that is, taken and carried away.
3. The taking must be without the consent of the owner of the property.
4. The property must be taken with the intention of permanently depriving the owner of it.
5. The property must be taken without a claim of right made in good faith.
6. The property must be taken dishonestly.

[5] All three charges arose from one transaction. The entire prosecution case is based upon the complainant's testimony. The Accused did not give evidence, which is his entitlement, and I draw no adverse inference. The prosecution carries the burden to prove all the elements of the charged offences beyond reasonable doubt.

[6] The physical elements of the two rape offences are not disputed by the Accused. The defence case is that the sexual intercourse and fellatio were consensual. The real issue is whether the two sexual acts were committed without the consent of the complainant and whether the Accused knew the complainant did not consent. If she did not, then obviously he knew she had not consented.

[7] The defence case on the charge of theft is that the Accused did not take the complainant's bank card and \$30.00 cash. It is not in dispute that the bank card and the cash belonged to the complainant. The Accused has not made any claim that he was legally justified in taking the property. The real issue is whether the Accused

dishonestly took the complainant's property without her consent and with the intention to permanently deprive her of it.

- [8] The complainant is a young woman. Her testimony is that in the evening of 30 November 2017, she left her home to buy cigarettes after consuming liquor with her flat mates. She met the Accused at the Mecure Hotel. She had gone to the hotel to withdraw money from the ATM machine. Her testimony is that she was depressed and suicidal due to some problems with her boyfriend. The Accused introduced a Caucasian woman to the complainant. There was some suggestion that the Caucasian woman was the spouse of the Accused. The complainant shared her problems with the couple and accompanied them to their hotel room. While she was in the room, the Accused offered her marijuana. She recognized the substance by its smell. After taking two puffs, she passed out.
- [9] She doesn't know what happened after she passed out and her next memory is of her being driven on the back seat of a vehicle. The Accused carried her out of the vehicle and took her into a room and made her lie in the bed. He left the room for a short while and then returned. He touched her vagina while she was lying in bed. She got up and told him that she was not that type of girl. He then threatened her that she had to pay for what she did that night and that he would get his cousin from the military to escort her home. She said she felt ashamed and scared and when the Accused told her to take off her clothes, she did. She complied so that she could go home. She heard noises from the next door. She started to scream and at that moment the Accused choked her by smothering her face with a pillow. She lost consciousness. She felt his penis inside her vagina. She heard him saying that she would be pregnant with his baby. I am mindful that this incident is an uncharged act that the prosecution is relying upon to put the charged incidents into true and realistic context. The charged incidents were allegedly committed shortly after this uncharged act.
- [10] The complainant's testimony is that after the uncharged act he took a shower and left the room with her clothes. When he returned, he made her perform fellatio on him. He pulled her by her hair and slapped her in the face. She did not consent. He made a video of her performing fellatio with his phone.



[11] After penetrating her mouth, he pushed her to the bed and had sexual intercourse with her. She couldn't do anything. He was physically heavy and she felt weak. After having sexual intercourse, he told her that his mood was really off. He left the room telling her that he was going to the bar. He didn't go the bar. She heard him chatting to the house keeping lady on the corridors. She heard him saying to the lady that she (referring to the complainant) was after his money. He brought the lady inside the room. The complainant said she went and hid inside the bathroom because she only had a bed sheet to cover herself. She said she was embarrassed and scared. The Accused was with the house keeping lady. The lady left without seeing the complainant.

[12] The Accused told the complainant to take a shower. While she was in the shower he made a video of her in the shower with his phone. He warned her not to leave the room or he would leak the video on the internet. This time, he left her clothes behind. He took her bank cards, house keys and cash with him saying she had to pay for the room and for what she did to him. He said to her that "she was acting like a slut". After he had left the room, the housekeeping lady knocked at the door. The complainant was told that it was time to check out. When the complainant realized that the Accused was nowhere to be seen, she stepped out of the room. She took his mobile phone with her, which he had left it in the bathroom. She checked the phone. Her videos were on the phone. She realized that she was at the Wailoaloa Beach Resort. She walked to her home in Matintar from Wailoaloa. She discarded the phone into the bushes after taking the battery out. She did not complain to her female flat mate when she arrived home. She said she was afraid and ashamed to raise alarm or to complain.

[13] If her account of what transpired at the Wailoaloa Beach Resort is true then all three charges have been proven. On the rape charges, I feel sure that the physical acts of penetration did in fact occur. The majority assessors have obviously believed the complainant's account that she did not consent to sexual intercourse and penetration of her mouth. They have also found her explanations for not raising alarm or reporting when there were opportunities to do so reasonable in the circumstances of

this case. The circumstances were as such as to place the complainant in a vulnerable position – she had consumed liquor and marijuana and had passed out when she was moved from one hotel to another secluded hotel by the Accused. Obviously, the Accused knew about the complainant’s condition when he moved her to another hotel. She was physically too weak to put up any resistance and her judgment to raise alarm or report may have been affected by the mental condition she was under when the physical acts were committed. To make the circumstances worse, the Accused threatened her and made sexually explicit videos of her. She felt scared and ashamed. Her explanation for not raising alarm or reporting is reasonable and I believe her account of not consenting to sexual intercourse or penetration of her mouth. I feel sure that she did not consent to the two physical acts of penetration and the Accused knew she did not consent.

[14] I believe the complainant’s account that the Accused dishonestly took her property without her consent and with the intention to permanently deprive her of it.

[15] The prosecution has satisfied the guilt of the Accused on all three charges beyond reasonable doubt. The verdict of the Court is:

Guilty and convicted of rape as charged on count one.

Guilty and convicted of rape as charged on count two.

Guilty and convicted of theft as charged on count three.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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