

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 132 of 2017

STATE

V

- 1. KOLINIO VOLANAVANUA**
- 2. SEMISI TEKEULA**
- 3. JEKE VOLI**
- 4. LEPANI ROKOVUNA**
- 5. "VD" (JUVENILE ONE)**
- 6. "PR" (JUVENILE TWO)**

Counsel : Ms. R. Uce for the State.
: Ms. K. Vulimainadave for the first and second Accused.
Ms. V. Diroiroi and Ms. P. Reddy for the third Accused.
Ms. V. Narara and Mr. T. Varinava for the fourth Accused and both Juveniles.

Dates of Hearing : 20, 21, 22 and 26 March, 2019
Closing Speeches : 27 March, 2019
Date of Summing Up : 28 March, 2019
Date of Judgment : 29 March, 2019

JUDGMENT

(The name of the complainant and the two juveniles are suppressed, they will be referred to as "MD", "VD" and "PR" respectively).

1. The Director of Public Prosecutions charged the four accused persons and the two juveniles 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

KOLINIO VALANAVANUA, on the 7th day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of **“MD”** 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

“VD”, on the 7th day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of **“MD”** without her consent.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

“PR”, on the 7th day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of **“MD”** without her consent.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

SEMISI TEKEULA, on the 7th day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of “**MD**” without her consent.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

JEKE VOLI, on the 7th day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of “**MD**” without her consent.

SIXTH COUNT

Statement of Offence

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

Particulars of Offence

LEPANI ROKOVUNA, on the 7th day of June, 2017 at Yasawa Island in the Western Division, inserted his penis into the vagina of “**MD**” without her consent.

2. The three assessors had returned with a unanimous opinion that the four accused persons and the two juveniles were guilty of rape as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up, re-direction and the evidence adduced at trial.

4. The prosecution called two witnesses whereas all the accused persons and the juveniles exercised their right to remain silent and did not call any witness.
5. The prosecution alleges that on the 7th of June, 2017 at about 9.30 pm, the first accused Koli forcefully held the complainant's hand and took her to the boys hostel. At the hostel Koli switched off the light and took the complainant inside and made her sit on the floor then pushed her to lie down. After removing her panty, Koli forcefully inserted his penis into her vagina.
6. As the complainant was about to stand up, the first juvenile "VD" came and pushed her on the floor. The complainant tried to push the juvenile away but couldn't since he was lying on top of her. The first juvenile forcefully had sexual intercourse with the complainant. Thereafter the second accused Semisi came and pushed her to lie down. He forcefully inserted his penis into her vagina she did not do anything since he was lying on top of her, she tried to push him but couldn't since he was heavy.
7. When the complainant was about to stand up the second juvenile "PR" came and forcefully inserted his penis into the complainant's vagina. Thereafter the third accused Jeke came and pushed her on the floor and forcefully inserted his penis into the complainant's vagina. As the complainant was about to stand up, Lepani came on top of her and forcefully inserted his penis into her vagina.
8. The complainant did not do anything since she was afraid the four accused persons and the two juveniles might harm her she also did not agree or consent to have sexual intercourse with any of the six boys.

9. Isoa Tuirara the teacher who was assigned to look after the students in the dormitory that night saw the complainant lying in the boys hostel. He asked the complainant what she was doing there but there was no response from her. Isoa then told her to go home and he will question her later.
10. At home when Isoa questioned the complainant about what she was doing in the dormitory the complainant replied that Tekeula, "PR", "VD" and Koli had sexual intercourse with her. The next morning she told him there were two more boys namely Jeke and Lepani. Isoa also stated that the complainant had told him that when she was on her way home she met Koli and they went to the boys hostel. The complainant appeared to be afraid when she told him all this.
11. On the other hand the four accused persons and the two juveniles took the position that on 7th June, 2017 they had sexual intercourse with the complainant with her consent. The complainant cried rape after she was caught by Master Isoa in the boys hostel a place where she was not supposed to be. The complainant was living with Master Isoa and she knew she was in trouble because he was very angry to see her in the boy's hostel so to save herself she made this allegation of rape against all of them.
12. After considering the evidence adduced by the prosecution I am unable to accept that the complainant told the truth in court. Her evidence was unreliable she said one thing in her evidence in chief and then contradicted herself to the same proposition in cross examination.
13. The complainant was taking her time to answer questions and the impression I got was that when she was in a difficult situation she would ask the question to be repeated allowing for more time to think of a way out. When questioned by counsel to explain or clarify her answers the


complainant was not forthcoming. The demeanour of the complainant was such that she was not forthright and/or up-front with her evidence.

14. As the trial progressed it became obvious that she was also not straightforward in her answers and her demeanour was not consistent with her honesty.
15. The complainant did not tell the truth in court when she said Koli her boyfriend had forcefully taken her to the boys hostel by holding her hand when she told her teacher Isoa immediately after the incident that she had gone with Koli to the hostel denoting voluntariness as opposed to being forced.
16. This court also rejects the evidence of the complainant that she was pushed to the floor by the accused persons and the juveniles and that she did not show any resistance because she was afraid they might harm her. This evidence of the complainant is implausible and untenable since she told the court in cross examination that the only reason why she had told the court about the above was to save herself after Master Isoa had caught her in the boys hostel.
17. Furthermore, the complainant was not expecting Master Isoa to come to the boys hostel she was shocked and ashamed to see him. The complainant also agreed that to save herself she had mentioned in her evidence that she did not consent to have sexual intercourse with the accused persons and the juveniles.
18. This court accepts that Master Isoa was very angry when he saw her in the boys hostel. In my judgment the complainant knew the only way out of the situation was to cry rape which she did. The complainant was discredited in cross examination making her evidence unreliable.

19. The complainant was no doubt shocked, ashamed and scared to be caught by Master Isoa. When questioned by Master Isoa away from the accused persons and the juveniles at his quarters the complainant did not tell him about forceful sexual intercourse what she said was that all the accused persons and the juveniles had sexual intercourse with her. According to Master Isoa when he saw the complainant in the boys hostel she was lying down leaning on the wall and was relaxed.
20. This court accepts the evidence of Master Isoa that the complainant had told him immediately after she was caught by him in the boys hostel that she had sexual intercourse with all the boys on 7th June, 2017 and that after meeting Koli on the way home she had gone to the boys hostel with Koli.
21. On the totality of the evidence the complainant was untruthful and unreliable she made the allegations in order to save herself.
22. The inescapable conclusion based on the evidence before the court is that the complainant made a false allegation of rape against the four accused and the two juveniles with whom she had consensual sexual intercourse on the night of the 7th June, 2017. The evidence narrated by the complainant was also improbable to say the least.
23. I therefore reject the evidence of the complainant as unbelievable and unreliable the prosecution has not been able to prove its case beyond reasonable doubt. There are many doubts in this case. This court is not satisfied beyond reasonable doubt that all the accused persons and the juveniles on the 7th June, 2017 had penetrated the vagina of the complainant with their penis without her consent. This was a case where the complainant had consensual sexual intercourse but cried rape after she was caught by Master Isoa at the boys hostel.

24. For the above reasons I overturn the unanimous opinion of the assessors.
25. The four accused persons and the two juveniles are not guilty of the offence of rape and they are acquitted forthwith of all the charges.
26. This is the judgment of the court.




Sunil Sharma
Judge

At Lautoka

29 March, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for all the Accused and the two Juveniles.