

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 140 of 2017

STATE

V

MAIKA ROKORAUWA

Counsel : Ms. Swastika Sharma for the State
Ms. Anisha Singh with Ms. Shantel Hazelman for the Accused

Dates of Trial : 8-10 April 2019

Summing Up : 12 April 2019

Judgment : 16 April 2019

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "KMK".

JUDGMENT

[1] According to the Amended Information filed by the Director of Public Prosecutions (DPP), the accused Maika Rokorauwa is charged with the following offences:

COUNT ONE

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Act of 2009.

Particulars of Offence

MAIKA ROKORAUWA, on the 2nd day of May 2017, at Cunningham, in the Central Division, assaulted **KMK** thereby causing actual bodily harm.

COUNT TWO

Statement of Offence

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

Particulars of Offence

MAIKA ROKORAUWA, on the 2nd day of May 2017, at Cunningham, in the Central Division, had carnal knowledge of **KMK** by inserting his penis into the anus of **KMK**, without her consent.

- [2] The accused pleaded not guilty to the two charges and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of the charge of Assault Causing Actual Bodily Harm (Count One) and not guilty of the charge of Rape (Count Two).
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 275 Crimes Act No. 44 of 2009 (Crimes Act).
- [6] In terms of Section 275 of the Crimes Act "A person commits a summary offence if he or she commits an assault occasioning actual bodily harm."
- [7] Section 14 of the Crimes Act provides in order for a person to be found guilty of committing an offence the physical elements and fault elements (mental element) of the offence must be established. Section 23 (1) of the Crimes Act stipulates that "If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element."
- [8] In my opinion Section 275 of the Crimes Act does not specify a fault element for the offence of Assault Causing Actual Bodily Harm. Thus, intention would be the fault element for that offence.

[9] Accordingly, I directed the Assessors that in order to prove the offence of Assault Causing Actual Bodily Harm, the prosecution must establish beyond any reasonable doubt that;

- (i) the accused;
- (ii) on the specified day (in this case the 2 May 2017);
- (iii) at Cunningham, in the Central Division;
- (iv) intentionally assaulted the complainant, KMK; and
- (v) thereby caused actual bodily harm to the complainant, KMK.

[10] The above individual elements were further elaborated upon in my summing.

[11] The term ‘harm’ has been defined at Section 4(1) of the Crimes Act to mean: *“any bodily hurt, disease or disorder (including harm to a person’s mental health) whether permanent or temporary, and includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).”*

[12] During my summing up I also explained to the Assessors the salient provisions of Section 207 (1) and (2) (a) of the Crimes Act.

[13] Accordingly, I directed the Assessors that in order for the prosecution to prove the count of Rape, they must establish beyond any reasonable doubt that;

- (i) The accused;
- (ii) On the specified day (in this case the 2 May 2017);
- (iii) At Cunningham, in the Central Division;
- (iv) Penetrated the anus of KMK with his penis (inserted his penis into the anus of KMK);
- (v) Without the consent of the complainant; and
- (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.

[14] The above individual elements were further elaborated upon in my summing.

[15] The prosecution, in support of their case, called the complainant, KMK, PC 5165 Koshal Dutt and Dr. Kitone Waqanisau. The prosecution also tendered the following document as a prosecution exhibit:

Prosecution Exhibit **PE1** - The Medical Examination Report of the complainant.

[16] The accused opted to remain silent.

[17] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), the prosecution and the defence have consented to treat the following facts as “*Final Agreed Facts*” without placing necessary evidence to prove them:

1. KM is the complainant in this matter.
2. MAIKA ROKORAUWA is the accused in this matter.
3. The complainant and the accused met at the playground near Grantham Road.
4. This is the first time that the complainant and the accused met.
5. The complainant was sitting on the see-saw.
6. The accused joined the complainant and they had a conversation.
7. The accused said to the complainant that he wanted to train with her.

[18] Since the prosecution and the defence have consented to treat the above facts as “*Agreed Facts*” without placing necessary evidence to prove them you must therefore, treat the above facts as proved beyond reasonable doubt.

[19] I have summarized the evidence of the prosecution witnesses in my summing up. The complainant has stated that she agreed and consented to the acts of sexual intercourse which took place in the room inside the wooden house, to which the accused had taken her, in the early hours of the morning on 2 May 2017. However, she testified that she did not consent to the accused putting his penis into her anus, which took place near the cassava patch.

[20] The complainant said the accused had been asking her for sex, but she had refused. The accused had then stood up to check if someone is walking by. The witness had also stood up. Then he had caught her. When asked to explain, she said thus “He caught me when I was standing. He picked up something hard and threw onto my forehead”. She hadn’t known what was thrown at her, because it was still dark. The accused had picked up the object from the cassava patch.

[21] When asked to show exactly where on her forehead she was struck, the complainant showed the center of her forehead. She said that she felt unconscious for about 10 seconds. Later, she said she had a blackout. Then she said her forehead had been bleeding.

- [22] Dr. Kitione Waqanisau described the facial injuries suffered by the complainant. There was a haematoma on the forehead, laceration on the left cheek, laceration on the right jaw and bruising of the neck. There was also one extra laceration on the chest. The haematoma was located above the eye brow but below the front hairline. The Doctor demonstrated as to where exactly the haematoma was located.
- [23] When asked as to how the haematoma appeared to him, the Doctor explained that it looks like a swelling that is purple and covered with blood clots. In his opinion, this was a serious injury that could have led to brain damage. However, the complainant did not show any signs of brain injury.
- [24] The medical examination had been done on the same day as the alleged incident. However, it is clear that the complainant had made no mention to the doctor that she was penetrated anally. As such, no anal examination had been conducted by the doctor.
- [25] The accused is totally denying that the incident he is charged for in Counts One and Two took place. The position taken up by the accused is that the complainant consented to have sex with him even at the cassava patch, like she did in the room inside the wooden house. With regard to the injury caused to the complainant's forehead, the position taken by the defence is that the accused had playfully thrown something at the complainant and that he had no intention to cause injury to her.
- [26] In relation to Count One, the Assessors have found the evidence of prosecution as truthful and reliable as they have by a unanimous decision found the accused guilty of the said charge.
- [27] In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinions of the Assessors in respect of the charge in Count One.
- [28] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offence of Assault Causing Actual Bodily Harm with which the accused is charged in Count One.
- [29] However, by their unanimous decision the Assessors have found the accused not guilty of Rape in respect of Count Two.
- [30] In my view, the Assessors' opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinions of the Assessors in respect of Count Two.

[31] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt in Count Two.

[32] In the circumstances, I find the accused guilty of the charge of Assault Causing Actual Bodily Harm and not guilty of the charge of Rape.

[33] Accordingly, I convict the accused of Assault Causing Actual Bodily Harm as charged in Count One; and acquit the accused of Rape as charged in Count Two.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 16th Day of April 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Suva.**