

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 85 of 2018

BETWEEN:

STATE

PROSECUTION

AND:

IOWANI MARIA VIANI

ACCUSED PERSON

Counsel:

Ms. A. Vavadakua for State

Mr. E. Radio for Accused

Summing Up:

21st May 2019

Judgment:

21st May 2019

JUDGMENT

1. The accused is being charged with one count of Attempt to Commit Rape, contrary to Section 208 of the Crimes Act and alternative count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The particulars of the offences are that;

FIRST COUNT

Statement of Offence

ATTEMPT TO COMMIT RAPE: *Contrary to section 208 of the Crimes Decree Act 2009.*

Particulars of Offence

IOWANI MARIA VIANI, on the 2nd of December 2018, at Kanakana Village, in the Northern Division, attempted to penetrate the vagina of SERENIA VERONIKA, with his fingers, without her consent.

ALTERNATIVE COUNT

Statement of Offence

SEXUAL ASSAULT: *Contrary to section 210 (1) (a) of the Crimes Decree Act 2009.*


Particulars of Offence

IOWANI MARIA VIANI, on the 2nd of December 2018, at Kanakana Village, in the Northern Division, unlawfully and indecently assaulted ***SERENIA VERONIKA***.

2. The hearing commenced on the 20th of May 2018 and concluded on the same day. The prosecution presented the evidence of three witnesses, including the complainant. The accused gave evidence for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I made my summing up
3. The three assessors in their opinions unanimously found the accused guilty to the count of Attempt to Commit Rape.
4. Having carefully considered the evidence adduced during the hearing, the respective closing addresses of the parties, the summing up and the unanimous opinion of the assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused had forcefully attempted to inserted his fingers into the vagina of the complainant while she was walking back home on the early hours of the 2nd of December 2018. The defence denies the allegation and said that the accused was present at the scene during the time material to this incident, but he only wanted to kiss the complainant. He had asked her that he wanted to kiss her, but he left the scene after the complainant started to scream. Accordingly the main issue in this matter is whether the accused attempted to insert his finger into the vagina of the complainant as claimed by the prosecution.

6. The complainant in her evidence explained that the accused covered her mouth, while he put his other hand inside her undergarment and tried to touch her vagina. The complainant managed to bite the hand of the accused and found an opportunity to scream and alarm the neighbours. Alosio and Alesi heard the scream and came out from their home to inquire what was happening there. The accused then heard that someone was coming, he then fled the scene. Alosio and Alesi confirmed that they heard the scream of the complainant. Moreover, Alesi has noticed the scratches and injuries on the face of the complainant.
7. In view of these reasons, I find the evidence given by the complainant is reliable, credible and truthful. I accordingly accept the evidence of the complainant and the two prosecution's witnesses as true, reliable and credible evidence.
8. Accordingly, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors.
9. In conclusion, I find the prosecution has successfully proven beyond reasonable doubt that the accused has committed the offence of Attempt to Commit Rape. Therefore, I find the accused guilty to the offence of Attempt to Commit Rape, contrary to Section 208 of the Crimes Act and convict to the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Labasa
21st May 2019

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