

IN THE HIGH COURT OF FIJI AT LABASA

CASE NO: HAC 57 of 2018
[CRIMINAL JURISDICTION]

STATE

V

WAISAKE RATAVO

Counsel : Mr. I. Rakaria for the State
Mr. A. Kohli for the Accused

Hearing on : 26 - 27 June 2019

Summing up on : 27 June 2019

Judgment on : 28 June 2019

JUDGMENT

1. The accused is charged with the following offence;

Statement of Offence

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

Particulars of Offence

WAISAKE RATAVO on 4 June 2018, at Savusavu in the Northern Division, penetrated the vagina of **SUSAN CATHERINE**, with his penis, without her consent.

2. The assessors have returned with the unanimous opinion that the accused is guilty of the above offence.
3. I direct myself in accordance with the summing up delivered to the assessors on 27/06/19 and the evidence adduced during the trial.
4. The prosecution called two witnesses including the complainant. The accused gave evidence in his defence.
5. The accused did not dispute that he penetrated the complainant's vagina. The two elements involving consent were in dispute.
6. According to the complainant the accused wanted to have sexual intercourse with her when she met the accused around 8.00am on 04/06/18 while she was walking towards the bus stop and when she did not agree, the accused pulled her from both her hands, took her to his farm and then had sexual intercourse with her without her consent. Her evidence was that the accused removed her skirt and made her lie down on the ground and penetrated her vagina while being on top of her.
7. During cross-examination the complainant said that after she met the accused that morning, they greeted each other and the accused went home to bring money for her. With this change in her version it became important to know whether the accused asked her to have sexual intercourse with him before or after the accused came back with the money. This was not clarified. It is pertinent to note that according to the complainant when she said she does not want to have sex with the accused because she is having menses, the accused told her "*just come, I will give you \$10*". Therefore, there appear to be a nexus between the request to have sex and the \$10 and given the circumstances it

would be logical to come to the conclusion that the accused went home to bring money after the said conversation.

8. If that is the case, a number of questions would then arise. For example;
 - Why didn't the complainant leave the place when the accused left?
 - Where did she meet the accused when the accused came back with the money?
 - Did the accused have a conversation with the complainant after he came back and if so what was the conversation?
 - When they met after the accused came back how did it progress to the accused pulling her from her hands?

9. In my view, the account given by the complainant in her examination in chief that the accused pulled her towards the farm soon after the conversation they had when they first met that morning, cannot be reconciled with the above admission during cross-examination that the accused went home and came back with \$10 after they met and before pulling her, without a plausible explanation.

10. The complainant admitted that the road she was referring to was a highway and this road was busy around 8.00am. Further, there were two bus stops on either side of her when she was allegedly pulled by the accused. These facts suggests that a person of her built cannot be pulled at that time from where she was walking without drawing the attention of someone and therefore calls into question the veracity of the complainant's evidence that the accused pulled her. The complainant's initial position was that she was pulled across the road and then through a slope to the place where they had sexual intercourse. Then she changed her position and said that she herself crossed the road and the accused pulled her from the same side of the road where the accused's farm was situated. She did not give a valid reason for her to cross the road given her

evidence that she was walking towards the bus stop which was on the side of the road she was initially walking.


11. Then again, her evidence was that the accused pulled her from both of his hands and he pulled her down the slope. She agreed that one should be careful when going down this slope. She also said that the accused was leading and she was behind him when they were going down the slope. During cross-examination she added that the accused was holding onto a knife when he was pulling her and that was the reason for her not to shout.
12. Taking into account all these circumstances, including the inconsistencies, I find that the complainant's version that the accused pulled her from the road to the place they had sexual intercourse to be improbable and unreliable.
13. The accused said in his evidence that because the complainant did not want her clothes to get dirty, they had sexual intercourse while they were standing where he inserted his penis from behind. On the contrary, according to the complainant she was lying down where her singlet and her back were rubbing against the ground when they were having sexual intercourse. However, according to the complainant's own evidence the aunt whom she met immediately after this encounter did not observe anything regarding the complainant's clothes and the complainant after leaving the farm went in a bus to the town and then to school.
14. I observed the manner and the time the complainant took to respond to the suggestion that they had sexual intercourse while they were standing. I did note from the inception that the complainant was taking more time than usually expected to respond to questions. PW2 said that the complainant's 'mind is slow'. Even if I accept that the complainant is someone with a relatively reduced cognitive ability in relation to her age, the time the complainant took to respond to the suggestion that they had sexual intercourse

while they were standing cannot be justified. Her demeanour from the time that suggestion was made and then when she finally answered, suggested that she was not telling the truth.

15. Considering all the circumstances, I have concluded that the complainant's evidence regarding the manner the accused and her had sexual intercourse is also unreliable.
16. Given all the evidence led in this case and the complainant's demeanour and deportment when she gave evidence, I did not find the evidence given by the complainant to be credible and reliable. The account she gave was improbable. It was clear that the complainant did not disclose what exactly happened between her and the accused on 04/06/18.
17. The complainant did not offer a proper explanation as to why she took 09 days to complain to PW2 and what made her make that complaint after 09 days. It is pertinent to note that according to the complainant's evidence, PW2 in fact is not the first person who heard about the incident from the complainant. All in all, the evidence of PW2 does not change the view I have formed regarding the credibility of the complainant.
18. In the circumstances, I find that the prosecution has failed to prove the two disputed elements involving consent beyond reasonable doubt.
19. Given the above conclusion it is not required to declare whether I found the accused's version to be credible or not. Nevertheless, I am compelled to state that the accused being 57 years old at the material time who was married with children, having sexual intercourse with the complainant who was 18 years old at that time and was still attending school in the manner as revealed in this case is deplorable according to moral standards.

20. However, in my judgment, the evidence presented in this case does not establish the offence of rape beyond reasonable doubt.
21. In light of the foregoing, I am unable conform to the unanimous opinion of the assessors.
22. I find the accused not guilty of rape and hereby acquit him accordingly.




Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State
Kohli & Singh, Barristers and Solicitors, Labasa for the Accused