

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 119 of 2016

BETWEEN : STATE

AND : JONE VAKACEGU

Counsel : Mr Seruvatu for the State
Ms Volau for the Accused

Dates of Hearing : 09 & 11 July 2019

Closing Speeches : 12 July 2019

Date of Summing up: 12 July 2019

Judgment : 15 July 2019

(The complainant's name is suppressed and will be referred to as LL)

JUDGMENT

1. The Accused was indicted for 2 counts of indecent assault and two counts of rape. After the closure of the prosecution case the court made a finding of not guilty in respect of the third count. The statements of offences and the particulars of offences are as follows;

First Count

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

Jone Vakacegu on the 16th day of May 2016, at Nadi, in the Western Division indecently assaulted LL.

Second Count

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

Jone Vakacegu on the 17th day of May 2016, at Nadi, in the Western Division penetrated the vagina of LL with his fingers, a child under the age of 13 years.

Third Count

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

Jone Vakacegu on the 25th day of May 2016, at Nadi, in the Western Division indecently assaulted LL.

Fourth Count

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

Jone Vakacegu on the 03rd day of June 2016, at Nadi, in the Western Division penetrated the vagina of LL with fingers, a child under the age of 13 years.

2. The Accused pleaded not guilty to all the counts on 17 August 2018. The trial commenced on 09 July 2019. The prosecution called three witnesses to prove

the case against the Accused. After the prosecution case was closed the court was of the opinion that no evidence was presented by the prosecution in respect of the third count. Therefore, a finding of not guilty was recorded in respect of the third count. Further the court decided that the prosecution presented evidence in respect of the other counts to establish that the Accused committed the offences and there is a case for the Accused to answer in respect of count 1,2 and 4.

3. The Accused was explained his rights pursuant to Section 231(2) of the Criminal Procedure Act. The Accused chose to remain silent and no witnesses were called for the defence.
4. Subsequently I have summed up the case to the assessors. After a short deliberation, the assessors unanimously found that the Accused is guilty to first, second and fourth counts.
5. The assessors were given directions on the elements of each offence that need to be proved by the prosecution. They were directed on the degree of proof, the issue of penetration, consent, corroboration, how to assess credibility of a witness and other general considerations.
6. Having directed myself in accordance with the summing up, I concur with the opinions of the assessors. I will now give the reasons for my judgement.
7. The first count against the Accused is indecent assault. The prosecution alleged that on 16 May 2016 the Accused touched the vagina of the complainant. According to the complainant the Accused had been without his clothes and he had touched her vagina under her tights. She said that she was wearing a panty under the tights. During the cross examination the defence questioned about whether the complainant took a bottle of oil or a loaf of bread when she met the Accused. The defence highlighted that there is an inconsistency in her statement and the evidence given in court relating to what she took with her.

The complainant gave an acceptable explanation for the inconsistency. Further I am of the view that inconsistency with regard to what she took that day does not affect the crux of the prosecution case or the credibility of the complainant.

8. The second count is rape. The complainant gave evidence that on 17 May 2016 the Accused poked her vagina with his fingers. Her evidence regarding the second count was not challenged by the defence during cross examination.
9. The complainant gave evidence regarding a third incident. She said that the Accused poked her vagina with his fingers at his place. The complainant did not specifically mention the date of the alleged incident. However, she said that on that day a police officer came to the Accused's house when the alleged incident was taking place. The prosecution called the police officer who came to the Accused's house to give evidence. He said that it was 3 June 2016. Therefore, I am satisfied that the prosecution has established that the third incident relates to the fourth count.
10. Although the complainant said that the Accused took off her clothes, the police officer Mataiasi Batirua said that the complainant's uniform had been lifted up and the undergarments had been up to her knees. However, it appears that the assessors have disregarded the inconsistency and have believed the complainant's evidence. I am also of the view that the inconsistency with regard to the complainant's clothes does not render the prosecution evidence unreliable as the complainant gave evidence in a very convincing manner.
11. The assessors have found the evidence of the prosecution as truthful and reliable based on the directions given to them about how to evaluate evidence. I am too satisfied that the complainant's evidence is reliable and credible. In my opinion the opinions of the assessors are not perverse, and I have no reason to disagree with the findings of the assessors.

12. I am satisfied that the prosecution has proved beyond reasonable doubt that on 16 May 2016 the Accused indecently assaulted the complainant.
13. Further I am satisfied that the prosecution has proved beyond reasonable doubt that on 17 May 2016 and on 3 June 2016 the Accused penetrated the vagina of the complainant with his fingers.
14. Accordingly, I convict the Accused for the first, second and the fourth counts.
15. He is acquitted for the third count.



Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission