

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 102 OF 2017

BETWEEN : ***STATE***

AND : ***SEMI RADANIVA***

Counsel : ***Mr. T. Tuenuku for the State***
Mr. E. Sailo for the Accused

Hearing on : ***25th of May 2020 - 26th of May 2020***

Summing up on : ***29th of May 2020***

Judgment on : ***16th of June 2020***

JUDGMENT

1. The accused, Semi Radaniva was charged with 1 count of Rape and 1 count of Indecent Assault. He pleaded not guilty to the charges and the matter was taken up for trial.
2. The charges were;

COUNT 1

Statement of Offence

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

Particulars of Offence

Semi Radaniva, on the 12th of January 2017, in the Western Division, had carnal knowledge of Reave Turagakece, without her consent.

COUNT 2

Statement of Offence

Indecent Assault: Contrary to section 212 (1) of the Crimes Act of 2009.

Particulars of Offence

Semi Radaniva, on the 24th of April 2017, in the Western Division, unlawfully and indecently assaulted Reave Turagakece, by kissing her.

3. The ensuing trial lasted for 2 days. The complainant Reave Turagakece and Talica Kurinabaya, the immediate supervisor of the complainant gave evidence for the prosecution.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged counts of Rape, and Indecent Assault.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.

Analysis

6. When analyzing the evidence I am mindful that only direct evidence which relates to the alleged incidents is the evidence of the PW1. I am also mindful that law does not require any corroboration of the complainant's evidence as per section 129 of the Criminal Procedure Act. Therefore, the ultimate question would be whether her evidence would be trustworthy and reliable.

7. The PW1's evidence is not very clear. There are many contradictions apparent. There is no denial that they had sexual intercourse on the as alleged. The issue would be whether it was consensus or not. The complainant has not complained of it to any one until the alleged second incident took place in about 3 ½ months later. Furthermore, at the alleged 2nd incident (indecent assault) the complainant has gone into the vacant room while the accused was at the door, without properly closing the door. If the complainant was raped before by the accused as alleged would it be normal for a person to act in such way. In my view it is not. Therefore the prosecution case would be weak on the credibility and the acceptability of the complainant's evidence.
8. The accused gave evidence in defense. His evidence is that complainant invited him into the room on both occasions and they have had consensual sex on the 1st occasion and kissed each other consensually at the 2nd incident. It is a possibility and creates a reasonable doubt in the prosecution case.
9. Therefore, I have doubts of the alleged commission by the accused and I am not convinced beyond a reasonable doubt that the accused has committed the alleged offences. In my view the prosecution has failed to prove the alleged offences beyond a reasonable doubt and the benefit of such is the entitlement of the accused.
10. I observed the complainant crying often in the witness box. I feel that the assessors were moved by the tears unduly.
11. Therefore the assessors were incorrect in opining that the accused is guilty. In the light of the available evidence I disagree with the opinion of the assessors.

12. I acquit Mr. Semi Radaniva of the alleged offences of Rape and Indecent assault.

13. This is the Judgment of the Court.



Chamath S. Morais
JUDGE

Solicitors for the State : ***Office of the Director of Public Prosecutions, Lautoka***
Solicitors for the Accused : ***KLaw Chambers, Nadi***