

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 123 OF 2018

BETWEEN : **STATE**

AND : **APENISA LAQERETABUA**

Counsel : *Mr. S. Seruvatu with Mr. R. Chand for the State*

: *Ms. L. Volau for the Accused*

Hearing on : *27th, 28th & 31st of August 2020*

Summing up on : *04th of September 2020*

Judgment on : *17th of September 2020*

JUDGMENT

1. The accused, Apenisa Laqeretabua is charged with a count of Rape, alleged as detailed below to have committed on Kalesi Leba who is known to him for about 1 ½ years.
2. The details of the offence that he was charged by the Director of Public Prosecutions is as follows;

COUNT 1

Statement of Offence

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

Particulars of Offence

Apenisa Laqeretabua, on the 29th day of June 2018 at Nadi, in the Western Division, penetrated the vagina of Kalesi Leba with his penis, without her consent.

3. The accused pleaded not guilty to the charge and the ensuing trial lasted for 3 days. At the trial the complainant Kalesi Leba gave evidence for the prosecution while the accused gave evidence and called a witness on his behalf, in defense.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to the alleged count of Rape.
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.
6. The sole witness to substantiate on the alleged incidents is the PW1, Kalesi Leba. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

Analysis

7. The PW1 has known the accused for about 1 ½ years, through her cousin Ravuravu. The partner of the PW1 was overseas, and she has been drinking with 3 of them that night namely, Ravuravu the cousin, Apenisa the accused and Josaia, another friend of Ravuravu.
8. She admitted to have flirted with and kissed Josaia first and thereafter the accused while drinking with them. As for the PW1, accused has gone into the bedroom, while the others were drinking and slept naked next to the little daughter of the PW1. As for the accused, he has gone into the bedroom with PW1 and they have had consensual sex, while Ravuravu and Josaia were out to buy more drinks. His version continues that while having sex with PW1, the little girl woke up and they were just lying when Ravuravu and Josaia returned. Then PW1 went out wrapped in a towel while he continued to lie down naked on the bed.
9. When it comes to the alleged incident, the accused got on top of her in the early hours of the morning and having removed her pants, had sexual intercourse with her. Her complaint was that he did not stop when he was asked to do so, when

the child awoke but went on banging her for about 25 seconds. If her version is accepted it is the continuation without stopping which may amount to the alleged offence.

10. The accused's version is that they have had consensual sexual intercourse thrice that night and twice they were interrupted by the little girl, sleeping at the corner of the bed.
11. It should be remembered that it is the word against the word and the accused's version is considerably supported by and consistent with the evidence of the DW2, Josaia. It is apparent the assessors were unanimous in disbelieving the PW1's version. Having observed the witnesses and duly considered the available evidence, I do not find any reason to deviate from the opinion of the assessors.
12. Therefore I agree and concur with the unanimous opinion of the assessors and acquit the accused of the alleged count of rape.
13. This is the Judgment of the Court.



Chamath S. Morais
JUDGE

Solicitor for the Prosecution : Office of the Director of Public Prosecution.
Solicitor for the Accused : Office of the Legal Aid Commission, Lautoka