

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 119 of 2023

STATE

vs.

AMONI LIUNAVUNA JUNIOR

Counsel: Ms. A. Vavadakua for the State
Mr. T. Varinava for the Accused

Date of Ruling: 09th May 2023

RULING

(On No Case To Answer)

1. The name of the Complainant is suppressed and hereinafter referred to as MS.
2. The Accused is charged with two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offences are:

COUNT 1

Statement of Offence

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

Particulars of Offence

AMONI LIUNAVUNA JUNIOR on the 21st day of January, 2022 at Natoaika village, Nausori in the Eastern Division, had carnal knowledge of **MS**, without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

AMONI LIUNAVUNA JUNIOR on the 22nd day of January, 2022 at Natoaika village, Nausori in the Eastern Division, had carnal knowledge of **MS**, without her consent.

3. Consequent to the plea of not guilty entered by the Accused, the matter proceeded to the hearing. The hearing commenced on the 4th of May, 2023. The Prosecution called one witness, the Complainant and concluded the Prosecution's case. The learned Counsel for the Defence then made submissions pursuant to Section 231 (1) of the Criminal Procedure Act, stating that there is no evidence to establish that the Accused committed these two offences as charges. The Court heard the oral submissions of the learned counsels for the Prosecution and the Defence. Having considered the evidence presented by the Prosecution and the respective oral submissions of both parties, I now pronounce my ruling as follows.
4. Section 231 (1) of the Criminal Procedure Act states that:

“When the evidence of the witnesses of the prosecution has been concluded and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person committed the offence”

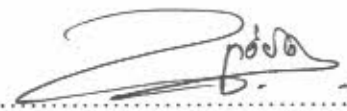
5. In pursuant to Section 231 (1) of the Criminal Procedure Act, the Court is required to satisfy whether there is some relevant and admissible evidence on each element of the offence as charged in the information and not whether the evidence is credible and acceptable.
6. The Complainant testified in her evidence that she went to the Accused's village with him of her own free will. She was then introduced to the Accused's uncle and aunty and spent two nights at their home. During these two nights, she slept with the Accused. She had introduced herself to the Accused when they first met as an 18 years old person. She told the Accused's grandmother that she was 18 years old when she met her at the Accused's village.
7. The Accused admitted the following facts as admitted facts under Section 135 of the Criminal Procedure Act.
 1. *Amoni Liunavuna Junior is the person charged in this case, [hereinafter referred to as "Amoni"]*
 2. *Amoni is 18 years of age at the time of the alleged offending.*
 3. *The Complainant in this matter is MS [hereinafter referred to as "MS"]*
 4. *Amoni is from Natoaika village, Naitasiri and lives in Natoaika village.*
 5. *MS lives in Natogadravu village, Tailevu.*
 6. *Amoni and MS met at the 10's s Rugby club competition at Ratu Cakobau Park, Nausori, sometime before the 20th January, 2022.*
 7. *Amoni was playing for the Natoaika village rugby club.*

8. *MS was playing for the Waitui-Waidroka rugby club.*
 9. *Amoni and MS went to Natoaika village on the 20th January, 2022.*
 10. *Amoni penetrated MS's vagina with his penis on the 21st of January, 2022.*
 11. *On Saturday 22nd of January, 2022 MS's parents came to Natoaika with Police Officers to take MS home.*
 12. *MS was medically examined at CWM Hospital on the 25th January 2022 and the contents of the medical report is not disputed.*
8. The main elements of the offence of Rape as charged under the first and second counts are:
- i) The Accused,
 - ii) Penetrated the vagina of the Complainant with his penis,
 - iii) The Complainant did not consent to the Accused to penetrate her vagina with his penis,
 - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his penis in that manner.
9. In respect of the first and second counts, there is no dispute regarding the identity of the Accused. The Complainant and the Accused knew each other and had met two times before this incident.
10. The Accused admitted that he penetrated the Complainant's vagina with his penis on the 21st of January 2022, when they went to sleep in the room. The Complainant, in her evidence, specifically stated that she actually wanted to have sex with the Accused but was afraid. The Complainant did not say that she did not consent to the Accused penetrating her vagina with his penis. Hence, there is no evidence that the Complainant

did not consent to the Accused penetrating her vagina with his penis in respect of the first count.

11. Regarding the second count, the Complainant testified in her evidence that on the same night but early morning, the Accused had sex with her, but it was painful. However, the learned Counsel for the Prosecution did not lead her main witness, the Complainant, to specify what form of sex the Accused had with her and what part of the Complainant's body she felt pain. The Prosecution did not present any evidence to establish that the Accused penetrated the vagina of the Complainant with his penis without her consent regarding the second count. The Complainant only stated that the Accused had some unspecified form of sex with her on the early morning of the 22nd of January 2022.
12. In view of the evidence presented by the Prosecution, there is no evidence to establish that the Accused had committed these two counts of Rape as charged in the information. Thus, I acquit the Accused of these two counts of Rape as charged in the information.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

09th May 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.