

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 205 of 2022

STATE

vs.

EPARAMA NAINOKA

Counsel: Ms. J. Fatiaki with Ms. P. Kumar for the State
Mr. W. Navuni for the Accused

Date of Hearing: 28th June 2023

Date of Ruling: 30th June 2023

RULING

[No Case To Answer]

1. The Accused is charged with one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and two counts of Rape, contrary to Section 207 (1) (2) (a) of the Crimes Act. The Particulars of the offences are:

Count 1

Statement of Offence

SEXUAL ASSAULT: *Contrary to Section 210 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

EPARAMA NAINOKA on 20th February, 2022 at Nasinu, in the Central Division, unlawfully and indecently assaulted **KENESI BULI** by touching her vagina on top of her panty.

Count 2:

Statement of Offence

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

Particulars of Offence

EPARAMA NAINOKA on 20th February 2022 at Nasinu, in the Central Division, penetrated the vagina of **KENESI BULI** with his penis, without her consent.

Count 3:

Statement of Offence

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

Particulars of Offence

EPARAMA NAINOKA on 22th March 2022 at Nasinu, in the Central Division, penetrated the vagina of **KENESI BULI** with his penis, without her consent.

- Consequent to the plea of not guilty entered by the Accused, the matter proceeded to the hearing. The hearing commenced on the 28th of June 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 three offences as charged in the Information. The learned Counsel for the Prosecution conceded the application made by the learned Counsel for the Defence, stating the Prosecution did not present evidence to establish that the Accused committed these three offences, and invited

the Court to act under Section 231 (1) of the Criminal Procedure Act. Having considered the evidence presented by the Prosecution and the respective oral submissions of both parties, I now pronounce my ruling as follows.

3. 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”

4. 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.
5. The main elements of the offence of Sexual Assault are that:
- i) The Accused,
 - ii) Indecently and unlawfully,
 - iii) Assaulted the Complainant,
6. The main elements of the offence of Rape as charged under the second and third 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.

7. There is no dispute regarding the identity of the Accused as they are known to each other well. The Complainant testified in her evidence that Accused did not do anything to her on the 20th of February 2022 and also on the 22nd of March 2022. In her evidence, the Complainant did not disclose any act of sexual assault or rape committed by the Accused on her.
8. In view of the evidence presented by the Prosecution, there is no evidence to establish that the Accused had committed these three counts as charged in the information. Thus, I acquit the Accused of these three counts as charged in the information.
9. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

At Suva

30th June 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.