

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 222 of 2016

STATE

V

ALIPATE VUKI

Counsel : Ms. Lavenia Bogitini for the State
Ms. Aarti Prakash with Mr. Krisheel Chang for the Accused

Dates of Trial : 8-10 May 2018

Summing Up : 11 May 2018

Judgment : 14 May 2018

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "SC"

JUDGMENT

[1] The accused, Alipate Vuki, was charged with the following offence:

COUNT ONE

Statement of Offence

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

Particulars of Offence

ALIPATE VUKI on the 25th day of March 2016, at Namosi, in the Central Division, penetrated the vagina of **SC** with his penis, without her consent.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the accused not guilty of the count of Rape.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] In support of their case, the prosecution called the complainant, SC, and her uncle Apisai Dreuvadra.
- [6] The accused opted to remain silent.
- [7] During my summing up I explained to the Assessors the salient provisions of Section 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [8] The Assessors were further directed that in order to prove the charge of Rape, the prosecution must establish beyond reasonable doubt that;
 - (i) The accused;
 - (ii) On the specified day (in this case the 25 March 2016);
 - (iii) At Namosi, in the Central Division;
 - (iv) Penetrated the vagina of SC with his penis;
 - (v) Without the consent of the complainant; and
 - (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.

- [9] Each of the above elements were further elaborated upon in my summing up.
- [10] I informed the Assessors that in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to prove them. Therefore, that they must treat those facts as proved. Based on the said agreed facts the identity of the accused, the date of incident (25 March 2016), the place of incident (Wainivusu in Namosi), and the fact that the accused inserted his penis into the vagina of the complainant are proved.
- [11] As such, the only elements left for the prosecution to prove were the elements relating to consent. That the accused, penetrated the vagina of SC with his penis without her consent; and the accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not she was consenting.
- [12] The accused is taking up the position that he had consensual sexual intercourse with the complainant. The complainant totally denies this position and submits that the accused forced himself on her.
- [13] It is clear that the Assessors have not believed the evidence of the prosecution as truthful and reliable, as they have unanimously found the accused not guilty on the charge of Rape.
- [14] In my view, the Assessor's opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinion of the Assessors.
- [15] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Rape against the accused beyond any reasonable doubt.
- [16] In the circumstances, I find the accused not guilty of the charge of Rape and accordingly I acquit him.




Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT SUVA

Dated this 14th Day of May 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Office of the Legal Aid Commission, Suva.