

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 133 OF 2014**

**STATE**

**v**

**AMINIO VUKICIGAU SAROGO**

**Counsel:** Ms. R. Uce for State

Ms. V. Narara with Ms N. Pratap for Accused

**Date of Summing Up:** 15<sup>th</sup> March, 2018

**Date of Judgment:** 16<sup>th</sup> March, 2018

**JUDGMENT**

1. The Accused is charged on the following Information and was tried before three Assessors.

*Statement of Offence*

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

### *Particulars of Offence*

**AMINIO VUKICIGAU** on the 15<sup>th</sup> day of October 2014 at Sigatoka in the Western Division had carnal knowledge of **ADI LUSIA DONATO**, without her consent.

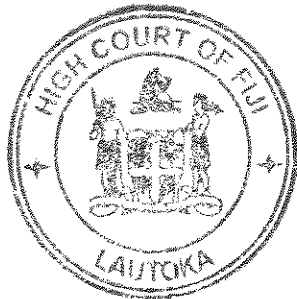
2. Assessors in their majority opinion found the Accused guilty of Rape as charged. I reviewed the evidence led in the trial with my own summing up.
3. I concur with the majority opinion of Assessors. I proceed to give my reasons as follows.
4. There is no dispute as to the identity of the Accused. It is also agreed that Accused and Complainant had sexual intercourse inside the van.
5. Only dispute is whether the said sexual intercourse between the Accused and Complainant was consensual or not.
6. Prosecution called two witnesses and based their case substantially on the evidence of the Complainant. Accused remained silent and called two witnesses for Defence.
7. Complainant said that Accused pulled and forced her into the van and pushed her down on the seats. He removed her t- shirt, shorts and panty and inserted his penis into her vagina. He had sexual intercourse with her for about 10 minutes. She tried her best to stop and push him, but she could not. She screamed and banged the side of the van but no one came to assist her. She did not like what he did. He had sexual intercourse without her consent.
8. I am satisfied that Complainant told the truth in Court. Her lack of consent was demonstrated when she relayed the incident to her uncle, Alivereti, and went with him to the police station to make a prompt complaint.
9. Alivereti came and gave evidence to say that he received such a complaint from the Complainant. Complainant's prompt complaint to her uncle and police soon after the incident bolstered the credibility of the version of Prosecution.
10. Defence Counsel argues that Complainant had an ample opportunity to complain either to her cousin Loqorio or Bolo, the first persons she saw

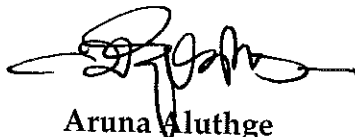
immediately after the alleged rape. Complainant explained why she did not complain in the first place to her cousin or Bolo. She gave two explanations. Firstly, she said that she had to come out of the van clad in a *sulu* that she found in the van. All her dresses had been forcibly removed by the Accused at the encounter. Secondly, she thought it not proper for her to tell either of them as they were drunk.

11. Complainant's evidence that her t-shirt, shorts and panty were forcibly removed by the Accused was supported by the evidence of Alivereti when he said that Complainant was covering herself only with a *sulu* when she boarded his car. Alivereti also said that the panty and t-shirt he found on the road were later recognised by the Complainant to be the cloths she was wearing in that night. Complainant further said that she was not in a position to stop at Korolevu Police Post on her way to Namatakula because she was not properly attired. Alivereti also confirmed that he had to drive Complainant home so that she could properly dress up before going to the police post to lodge the complaint. Loqorio and Bolo admitted that they were drunk at the night club. Under these circumstances, Complainant's thinking that it was not proper for her to relay the incident to his cousin and Bolo is logical. She complained to her uncle soon thereafter. Complainant's explanation is logical and therefore acceptable.
12. Complainant's evidence that she struggled, banged the van and screamed is consistent with lack of consent on her part. It is possible that a rape victim may not have received injuries at the encounter. Presence of injuries on victim's body is not crucial to prove lack of consent. The offence of rape may or may not be accompanied by violence, force or the threat of force. It is no part of the Prosecution's obligation to prove that the Accused used force or the threat of force in order to bring about a rape conviction.
13. The alleged rape took place inside a van near a night club. It is possible that no one heard when she screamed and banged the van.
14. The so called contradictions highlighted by the Defence Counsel are not significant or material so as to discredit the version of the Prosecution.
15. I observed Complainant's demeanor in court. She was straightforward and not evasive. I am satisfied she is an honest and credible witness.

16. Defence called two witnesses to show that Complainant was in an intimate relationship with the Accused in the run up to the alleged sexual intercourse.
17. Both witnesses called by Defence said that Complainant came to their table at the night club, danced with Accused, sat on his lap, started kissing him and, after dancing, exited the club with the Accused, holding his hand.
18. These two witnesses were close associates of the Accused who were consuming alcohol with Accused that night. I would not be inclined to attach much weight to their evidence. They contradicted each other materially in their respective evidence. The evidence they gave is inconsistent even with Accused's own admissions. Accused in the agreed facts admitted that his team picked Complainant from Namatakula and they stopped off to consume beer before proceeding to Del Corrie night club. Complainant's evidence is consistent with this admission. However, both defence witnesses denied that Complainant boarded the van at Namatakula. They said that they saw the Complainant for the first time at the night club. Defence witness Koroi in his statement to police had never mentioned anything material what he uttered in Court as to her drinking at the club, kissing, dancing, and sitting on Accused's lap etc.
19. Even if this evidence were to be believed, evidence as to her drinking in a club with boys, kissing in public, sitting on the lap will have little weight when it comes to deciding the crucial issue of consent to have sexual intercourse. It is true that alcohol and atmosphere she was exposed to at the club can lead to disinhibited behavior including sexual behavior. However the Court can't assume because Complainant was behaving in an uninhibited manner during a social gathering would have been prepared to engage in sexual activity with the Accused. By making a prompt complaint with police, Complainant dismissed the possibility of drawing the inference that she had consented to sexual intercourse. Evidence adduced for Defence does not create any doubt in my mind as to the credibility of the version of the Prosecution. Therefore, I reject the version of the Defence.
20. I am satisfied that the sexual intercourse took place without Complainant's consent. Prosecution proved the case beyond reasonable doubt.
21. I adopt the majority opinion of Assessors and find the Accused guilty of Rape.

22. Accused is convicted accordingly.
23. That is the judgment of this Court.



  
Aruna Aluthge  
Judge

AT LAUTOKA  
16<sup>th</sup> March, 2018

Solicitors: Office of the Director of Public Prosecution for State  
Office of the Legal Aid Commission for Defence