

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 222 of 2015

STATE

Vs.

JD

Counsel: Ms. U. Tamanikaiyaroi for the State
Ms. S. Prakash for Accused

Date of Hearing: 13th to 14th August 2018

Date of Summing Up: 16th August 2018

Date of Judgment: 17th August 2018

JUDGMENT

1. The names of the complainant and the accused are suppressed.
2. The accused is charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offences are that:

Count 1

Statement of Offence

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

JD between the 1st day of January 2013 and the 31st day of December 2013 at Vunisea, Kadavu in the Eastern Division penetrated the vagina of AR with his finger, without her consent.

Count 2

Statement of Offence

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

JD between the 1st day of January 2013 and the 31st day of December 2013 at Vunisea, Kadavu in the Eastern Division had carnal knowledge of AR without her consent.

Count 3

Statement of Offence

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

JD between the 1st day of January 2013 and the 31st day of December 2013 at Vunisea, Kadavu in the Eastern Division had carnal knowledge of AR without her consent.

3. The hearing commenced on the 13th of August 2018 and concluded on the 14th of August 2018. The prosecution called two witnesses, including the complainant. The accused decided to exercise his right to remain in silence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered the summing up.
4. The three assessors, in their opinion unanimously found the accused guilty for all three Counts.
5. Having considered the evidence presented during the hearing, the respective closing submissions of the parties, the summing up and the unanimous opinion of guilty given by the three assessors, I now proceed to pronounce the judgment as follows.

6. The prosecution alleges that the accused came into the room when the complainant was sleeping with her two siblings. He had then inserted his fingers into the vagina of the complainant, without her consent. Afterward, he had inserted his penis into her vagina without her consent. The parents of the complainant were not at home as they have gone to Suva in that night.
7. In respect of the third count, the accused had come into the room, when the complainant was sleeping with her siblings. Having approached her in that manner, the accused had inserted his penis into her vagina without her consent. The mother of the complainant was sleeping in the other room in that night. Her father had gone to Suva for work.
8. The defence suggested to the complainant during the cross examination, that the accused only put his penis on top of her vagina and the complainant had agreed for that. The complainant denied this proposition. In respect of the third count, the defence suggested to the complainant that it was the complainant that came and sat on the accused and rubbed her body against the accused's.
9. According to the evidence adduced during the hearing, the defence did not dispute that the accused was present in the house of the complainant during these two nights. The defence neither disputed nor suggested otherwise that the complainant has mistakenly identified the accused as the person who came to her in the night and committed these crimes.
10. The Complainant in her evidence explained the lighting condition of the room, which allowed her to clearly recognise the person who came into the room as the accused. Furthermore, the complainant explained the reason for not shouting or screaming for help when the accused came and committed these crimes. Moreover, she explained the reasons for not informing anyone about the second incident.
11. Having taken into consideration the evidence of the complainant, I do not find the inconsistency shown by the learned counsel for the defence has adversely affected the

credibility and reliability of the evidence of the complainant. I accordingly, accept the evidence of the complainant as truthful and reliable evidence.

12. In view of the above findings, I hold that the prosecution has successfully proven beyond reasonable doubt that the accused had committed these crimes as charged in the information. Therefore, I do not find any cogent reason to disagree with the unanimous opinion of guilty given by the three assessors in respect of all three counts.
13. In conclusion, I find that the accused is guilty for one count of Rape, contrary to section 207 (1) and (2) (b) and two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, and convict him for the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
17th August 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.