

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 142 OF 2016

STATE

v

POKITI NALEBA

Counsel: Ms. S. Kiran for State
Ms. K. Vulimainadave and Ms. B. Lata for Accused

Date of Summing Up: 21th June, 2018
Date of Judgment : 25th June, 2018

JUDGMENT

1. The Accused is charged with one count of Rape and was tried before three Assessors. The Information reads as follows:

Statement of Offence

RAPE: Contrary to Section 207 (1) and Section 207 (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

POKITI NALEBA on 8th day of December, 2015, at Nadi in the Western division, penetrated the vagina of RANJEET KAUR with his penis, without her consent.

2. After a deliberation of 20 minutes, Assessors returned with a unanimous opinion that the Accused is guilty of Rape as charged.
3. I adjourned to deliberate on my Judgment. Having reviewed my own summing up and evidence led in trial I have decided to adopt the unanimous opinion of Assessors. I proceed to give my reasons as follows.
4. To find the Accused guilty of Rape in this case, Prosecution must prove beyond a reasonable doubt that the Accused penetrated Complainant's vagina with his penis without her consent.
5. Prosecution called two witnesses, the Complainant and her husband Pradeep and based their case substantially on the evidence of the Complainant. Prosecution also relies on evidence of distress to prove consistency of the Complainant's conduct.
6. Defence case is one of denial. Defences's position is that the Accused was elsewhere when the alleged rape incident occurred.
7. Having reviewed all the evidence led in the trial, I am satisfied that the evidence the Complainant gave in Court is truthful and believable.
8. I am satisfied beyond reasonable doubt that it is the Accused and nobody else that had committed the alleged rape.
9. The Complainant said that the Accused came to her house on the 2nd of December, 2015, her father-in-law's birthday, and massaged her husband Pradeep's leg since it was paining. The Accused then promised that he will buy some herbal medicine from Rakiraki and took \$50.00 and went. He brought the medicine on the 7th December, 2015 and gave it to Pradeep to drink. The Accused again visited them on 8th of December, 2015, and while talking to Pradeep under a tree, he asked Pradeep, if he had ever dreamt about anything. When he said

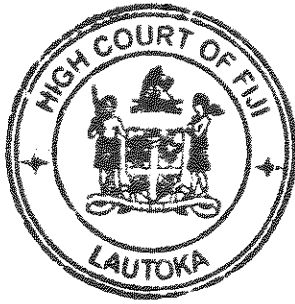
'no', then he asked her wife to come and asked the same question. Then he wanted to talk to her more because she seemed shy and took her to the porch. In the meantime, Pradeep fell asleep under the tree.

10. When the Complainant went inside her room, the Accused followed her to the room and started touching her. She told him to leave. When she was trying to leave the room the Accused closed the door. When the Complainant tried to call her daughter the Accused pressed her mouth. The Accused then removed her clothes and panty and raped her. She said that the Accused used his body part into her body part to have sex. She refused to name those body parts. But she drew Accused's body part on a piece of paper and gave a good description about her body part.
11. Pradeep confirmed Complainant's evidence. There are no material contradictions between her evidence and that of her husband. Her statement to police is not inconsistent with her evidence in Court.
12. The Complainant did not make a prompt complaint either to her husband or police. The reason she has given for the delay is reasonable and acceptable. The Complainant said that she was scared because the Accused had told her that if she told the incident to anybody he would kill them. I observed Complainant's demeanour and her manner of giving evidence in Court. She is a very shy lady. She was even reluctant to name the sexual organs in Court. I am satisfied that the complaint she ultimately made to police on the 27th February 2016 was genuine.
13. Complainant's distressed condition supported Complainant's consistency in her conduct. I am satisfied that the Complainant was in a distressed condition after the alleged incident and that distressed condition was not artificial and was only referable to the alleged rape and not any other cause.
14. The Defence took up the position that the Complainant and her husband made up this case against the Accused because they were not happy with Accused's refusal to join them in worshipping and also he took the major share of the honey they had collected. Both the Complainant and her husband vehemently denied

that they were engaged in worshipping or witchcraft. They also denied having had any dispute over the honey they had collected.

15. It is hard to believe that even if they had such a dispute, it will prompt the Complainant to make up an allegation of this nature against the Accused.
16. The Defence called three witnesses to show that the Accused was at Cavucavu settlement in Mataso on the 7th, 8th and 9th of December, 2015. The evidence presented by Defence's witnesses is totally unreliable. None of the Defence's witnesses was able to confirm that the Accused was at Cavucavu settlement on the material date. The witnesses for Defence are related to the Accused and therefore they are interested in the Defence case. The Defence's witness failed to show that they had gone to police and made a statement in support of Defence's version when the allegation against the Accused was first leveled two years ago.
17. Complainant's husband confirmed that the Accused came to his house on the day the alleged incident happened. His evidence is credible and believable. The Complainant's evidence that the Accused came to her house on the 8th of December, 2015 is never shaken. I do not have any reasonable doubt in Prosecution case.
18. The Complainant was reluctant to name the sexual organs that were involved in the alleged sexual conduct of the Accused. She used a drawing to portray the sexual organ of the Accused and gave a vivid description as to her sexual organ. The Assessors were satisfied that all the elements of rape were proved beyond a reasonable doubt.
19. I reject the version of the Defence. I am satisfied beyond reasonable doubt that the Accused penetrated the vagina of the Complainant with his penis. I accept the unanimous opinion of Assessors which is available on evidence led in trial.
20. I find the Accused guilty of Rape.

21. The Accused is convicted accordingly.
22. That is the Judgment of this Court.



AT LAUTOKA

25th June, 2018

Aruna Aluthge

Judge

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