

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 301 of 2017

STATE

v.

WAISAKE TURAGA

Counsel: Mr T. Tuenuku for State
Ms. S. Prakash for Respondent

Date of Hearing: 28th to 29th May 2018

Date of Summing Up: 30th May 2018

Date of Judgment: 31st May 2018

JUDGMENT

1. The accused is being charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of offence are that:

WAISAKE TURAGA on the 2nd day of February, 2017, at Nayavu village, in the Eastern Division, had carnal knowledge with **AB**, without her consent.

2. The hearing commenced on the 28th of May 2018 and concluded on the 29th of May 2018. The prosecution presented the evidence of four witnesses, including the complainant. The accused decided to exercise his right to remain in silence, hence, did not give evidence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up.

3. The three assessors in their unanimous opinion found the accused guilty for this offence.
4. Having carefully considered the evidence adduced during the hearing, the respective closing addresses of the parties, the summing up and the unanimous opinion of the three assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused lured the complainant into his house and then forcefully had sexual intercourse with her without her consent. The defence suggested to the complainant that such an incident never took place and she made up this allegation in order to save herself.
6. The main contention of the defence is that the complainant had not informed or related this incident to anyone for few days. The complainant had not told her mother when she came home after this incident on the 2nd of February 2017. When her father inquired about the mobile phone, she had again decided not to tell him about this incident. The complainant did not tell Aunty Litia when she asked her what she was doing at the house of the accused on the 8th of February 2017.
7. The complainant in her evidence explained that she was scared and ashamed. That was the reasons that she decided not to tell anyone about this incident. The complainant further explained why she went to the house of the accused again on the 8th of February 2017 to inform him about the phone. She said that she did not know what to do. Her father was putting pressure on her to return the phone. On the other hand, the accused had threatened her that he will do something worst, if she tells anyone about the incident. A young adolescent girl as of the complainant, in such a situation, would undoubtedly react the way the complainant reacted in this case. Therefore, I do not find the delay in informing this incident to her parents has discredited the reliability and credibility of the evidence given by the complainant.
8. I find there are some inconsistencies regarding the dates of this incident. However, I do not find that would affect the main issues that are being considered in this matter. The

evidence of the complainant is further supported by the evidence given by her father and Litia.

9. The complainant was straight and coherent throughout her evidence. She was not evasive during the cross examination. I accordingly accept her evidence as truth and credible.
10. Accordingly, I find the prosecution has proven beyond reasonable doubt that the accused had committed this offence of rape.
11. In view of above findings, I do not find any cogent reasons to disregard the unanimous opinion of guilty given by the three assessors.
12. In conclusion, I hold that the accused guilty for the offence 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
31st May 2018

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