

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 126 OF 2014

STATE

-v-

KELEMEDI LENATI

Counsel : Ms. S. Naibe for State

Ms. V. Narara for Accused

Date of Summing Up: 6<sup>th</sup> March, 2017

Date of Judgment : 8<sup>th</sup> March, 2017

## JUDGMENT

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

## Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (b) of the Crimes Decree 44 of 2009.

## Particulars of Offence

**KELEMEDI LENATI** on the 26th day of January, 2013, at Lautoka in the Western Division, penetrated the vagina of **NICOLE St. JOHN** with his finger, without the consent of **NICOLE St. JOHN**.

2. After a lengthy deliberation of nearly two hours, Assessors returned with a majority opinion of 'guilty'.
3. Having disagreed with the majority opinion, I proceed to give my reasons as follows.
4. Prosecution adduced evidence of the Complainant and the investigating officer Irene Singh. At the end of the Prosecution case, Accused elected to exercise his right to remain silent.
5. There is no dispute in this case as to the identity of the Accused. Accused admits in his record of caution interview (which is an admitted document in this case) that he penetrated Complainant's vagina with his finger.
6. Prosecution asserts that penetration took place without Complainant's consent. Accused, while denying the allegation, maintains that the Complainant was his sexual partner and that the penetration took place with her consent.
7. Prosecution says that Complainant's version is credible and consistent because she promptly made a complaint to police. They also say that there was no apparent motive for her to make up a case against the Accused.

8. Although Complainant eventually made a complaint to police, her evidence is filled with inconsistencies and contradictions. She has been evasive on many occasions and her story is hardly believable.

9. Complainant said, at the early stage of her evidence that she knew the Accused very well because she was brought up in Natokowaqa. Then she said she knew him because he used to drink a lot at the ground at Top Line.

Q: So how many years would you know him under this name as Kelemedi?

A: I just knew him by the name as Kelemedi.

10. When she was asked if she mentioned Accused's name to police then she said, the first time she came to know him was at the night club. She had not mentioned Accused's name to police. She had only identified the culprit as a 'Fijian guy'.

11. If she had known the Accused and his name before the incident, she would have identified the Accused by his name. Furthermore, Complainant changed her position dramatically in respect of her prior knowledge about the Accused.

12. Complainant also said initially that she was not married at the time of the incident. When she was reminded of her earlier evidence that she did not want to suck his penis because she was a married woman, then she admitted that she was a married woman by the time of the incident.

13. Complainant admitted that there were security personnel in and out of the night club and there was also a police post just opposite the night club. She had gone to the nightclub with her cousin Mere. Her uncle had also been manning the club as a security man at that time. She admitted that her cousin was sitting down

listening to music. According to her, she had raised alarm and called for help. They overheard her calls. This is what she said:

Q: Now you are confusing us Nicole, was he or he not there at the nightclub, your uncle?

A: He was there.

Q: When you call him for help, what did he do?

A: He didn't do anything, he just saw me when Kelemedi was doing that to me, he just stood and just watched.

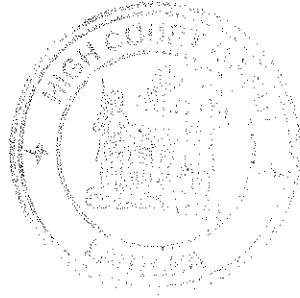
It is unbelievable that none of them including her uncle and cousin had come to her rescue if she raised alarm and protested.

14. According to Complainant's evidence it was the first time she had been to a night club. When she was asked to have drinks with the Accused she had refused saying 'I don't drink'. She said, at that point of time she was scared. However, she had the courage to say 'no' to drinks. If she did not like the place or was scared of the Accused and his friends, she had an ample opportunity to leave the place with her cousin. Nevertheless, she had remained there until the night club was eventually closed around one o'clock.
15. Complainant said that her cousin Mere had gone home by the time she was being dragged out of the nightclub. When she was asked how she came to know if Mere had gone home, then she said she did not know if she had already gone home.
16. Complainant said she was dragged to the park behind the Coronation church before the second incident. Dragging a woman in a public road for nearly five

minutes (going past a police post) without being noticed by anybody is practically impossible. At the Coronation Church Park she had seen an Indian couple. Quite surprisingly they also had not intervened to rescue her despite her calls for help.

17. Complainant, under cross- examination, admitted that, at the night club, her tight pants were pulled halfway down to her thighs by the Accused while she was standing up and her vagina was exposed to others when the Accused and his friends were playing with it for nearly two hours. This type of a conduct in a public place like a crowded night club is highly improbable.
18. Complainant in her evidence admitted that five friends of the Accused who were drinking with the Accused also took turns in playing with her vagina in the same way. Accordingly, altogether six people had raped her that night. In her complaint to police made soon after the incident, Complainant had not mentioned anything about other friends playing with her vagina. If such an incident ever occurred without her consent, she would definitely have told police that she was raped by Accused's friends also. This omission on her part in my opinion is material contradiction so as to sufficiently discredit her version.
19. Under cross examination, Complainant admitted that she got injured at the Coronation park incident and was bleeding. According to the medical report, no injuries had been noted by the doctor who had examined her soon after the incident.
20. A reasonable doubt has been created in my mind as to whether the Complainant had not consented. I give the benefit of that doubt to the Accused. Prosecution failed to prove the case beyond reasonable doubt. Having concurred with the minority opinion of Assessors, I find the Accused not guilty.

21. I acquit the Accused and discharge him accordingly.



  
Aruna Aluthge

Judge

AT LAUTOKA

8<sup>th</sup> March, 2017

Solicitors: Office of the Director of Public Prosecution for State

Office of the Legal Aid Commission for Accused