

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 128 of 2016

STATE

V

TEVITA RASUAKI

Counsel : Ms. Kimberly Semisi for the State
Ms. Safaira Ratu for the Accused

Dates of Trial : 29-31 May, 1-2 June & 5-6 June 2017

Summing Up : 8 June 2017

Judgment : 9 June 2017

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "K.R."

JUDGMENT

[1] The accused Tevita Rasuaki is charged with the following offences:

FIRST COUNT

Statement of offence

SEXUAL ASSAULT –Contrary to Section 210(1) (a) of the Crimes Act No. 44 of 2009.

Particulars of the Offence

TEVITA RASUAKI on the 19th day of March 2016, at Suva in the Central Division, unlawfully and indecently assaulted K.R., by touching her breasts.

SECOND COUNT

Statement of offence

SEXUAL ASSAULT –Contrary to Section 210(1) (a) of the Crimes Act No. 44 of 2009.

Particulars of the Offence

TEVITA RASUAKI on the 22nd day of March 2016, at Suva in the Central Division, unlawfully and indecently assaulted K.R., by touching her breasts.

THIRD COUNT

Statement of offence

SEXUAL ASSAULT –Contrary to Section 210(1) (a) and (2) of the Crimes Act No. 44 of 2009.

Particulars of the Offence

TEVITA RASUAKI on the 22nd day of March 2016, at Suva in the Central Division, unlawfully and indecently assaulted K.R., by licking her vagina.

FOURTH COUNT

Statement of offence

RAPE –Contrary to Section 207(1) and (2) (b) of the Crimes Act No. 44 of 2009.

Particulars of the Offence

TEVITA RASUAKI on the 26th day of March 2016, at Suva in the Central Division, penetrated the vagina of K.R., with his finger, without her consent.

FIFTH COUNT

Statement of offence

SEXUAL ASSAULT –Contrary to Section 210(1) (a) and (2) of the Crimes Act No. 44 of 2009.

Particulars of the Offence

TEVITA RASUAKI on the 26th day of March 2016, at Suva in the Central Division, unlawfully and indecently assaulted K.R., by licking her vagina.

- [2] The accused pleaded not guilty to the five charges and the ensuing trial was held over 7 days. The complainant, her mother, a medical officer and two police witnesses gave evidence for the prosecution. The accused, who is the complainant's step-father, gave evidence in support of his case.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three Assessors unanimously found the accused guilty of the count of Rape and the four counts of Sexual Assault against him.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors.
- [5] The prosecution case was primarily based on the evidence of the complainant. She was 15 years old at the time and studying in Form 4. She testified to the incidents that took place in March 2016.
- [6] On the 19 March 2016, she, her mother and step-siblings were sleeping on one mattress. Her step-father was sleeping on another mattress in the same room. Around 2.00 in the morning, she could feel that someone was touching her breast. When she felt this she says she was shocked and she cried. When she woke up she saw her step-father lying down on both her thighs and touching both her breasts. When she stood up, her step-father moved back to his mattress.
- [7] The complainant testified that on the 22 March 2016, they were all sleeping in the same manner in the living room. Whilst she was sleeping, she felt someone touched her breast and licked her vagina. She was shocked. She woke up. When she woke up she saw her step-father moving to his mattress. It was around 2.00 in the morning.
- [8] The complainant further testified that on the 26 March 2016, while she was sleeping, she felt that someone was licking her vagina and putting his finger into her vagina. When she woke up, she saw her step-father and she pushed the basin that was nearby. She saw her step-father moving to his mattress.
- [9] On all three occasions the complainant had immediately woken her mother, who was sleeping besides her. Her mother, Unaisi Leona Kikau, also testified to the incidents

which took place on the 19 March 2016, 22 March 2016 and 26 March 2016, respectively. It transpired in evidence that on all three occasions the complainant had referred to 'someone' committing the alleged acts on her. However, the witness testified that she knew very well that the complainant was referring to the accused as there was no one else at home, but only him at the time.

- [10] The complainant had been examined by Dr. Elvira Ongbit, on 29 March 2016. The Doctor testified that the complainant was emotionally affected and teary eyed while relating what happened to her. She had carried out a vaginal examination on the complainant. Her specific findings were as follows: hymen is elastic and fimbriated. Superficial abrasions were noted in both inner sides of labia minora and fossa navicularis.
- [11] The Doctor was of the opinion that the injury in the vaginal area could have been caused by rubbing. The most likely cause of this, is rubbing very hard. Her opinion was that the said injury could have been caused by the use of fingers or by an erect penis. When asked about the degree of penetration, the Doctor said she wouldn't say it is mild. Somebody must exert a lot of force to inflict such injuries.
- [12] The prosecution led the evidence of two police witnesses, namely OC 4942 Netani Seruwaqa and DC 4580 Pelasio Wainimace, to establish the admissibility of the admissions made by the accused in his caution interview statement, and thereby further strengthen its case.
- [13] The accused in his evidence said the allegations made against him is not true. As to the admissions in his caution interview statement he said he did not give any statement. He was forced to sign. He did not read the statement as he did not have his glasses, nor did the police officers read the statement back to him.
- [14] The Assessors have found the evidence of prosecution as truthful and reliable, as they unanimously found the accused guilty of the count of Rape and also the four counts of Sexual Assault. Therefore, the Assessors have obviously rejected the evidence of the accused.
- [15] In my view, the Assessor's opinion was not perverse. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors.
- [16] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences with which the accused is charged.
- [17] In the circumstances, I find the accused Tevita Rasuaki guilty as follows:

First Count-Sexual Assault- Guilty.

Second Count-Sexual Assault- Guilty.

Third Count-Sexual Assault- Guilty.

Fourth Count-Rape- Guilty.
Fifth Count-Sexual Assault- Guilty.

[18] Accordingly, I convict the accused on all five counts.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT SUVA

Dated this 9th Day of June 2017

Solicitor for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for the Accused : **Office of the Legal Aid Commission, Suva.**