

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 234 of 2014

STATE

v.

MITIELI WAIVONO

Counsel: Ms. Tivao for State
Mr. Waqainabete S., Mr Ali. S for Accused

Hearing: 25th, 26th and 27th January 2017

Summing Up: 30th January 2017

Judgment: 06th February 2017

JUDGMENT

1. The Accused is charged with eight counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offences are that;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 9th day of July, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 14th day of July, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 19th day of July, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 4th day of August, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 5th day of August, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

SIXTH COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 6th day of August, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

SEVENTH COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 7th day of August, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

EIGHTH COUNT

Statement of Offence

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

Particulars of Offence

MITIELI WAIVONO on the 8th day of August, 2014 at Taviya Village, Levuka in the Eastern Division had carnal knowledge of UNAISI NAIOBASALI without her consent.

2. The accused pleaded not guilty for these offences. Hence the matter proceeded to hearing. The hearing commenced on the 25th of January 2017 and concluded on the 27th of January 2017. The Prosecution adduced the evidence of victim only. The accused gave evidence and also called three more witnesses for his defence during the course of the hearing. Subsequently, the learned counsel for the prosecution and the defence made their respective closing submissions. I then sum up the case to the assessors.
3. The three assessors returned with unanimous opinion of guilt for each of these eight counts. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having carefully considered the evidence adduced during the hearing, the agreed facts tendered by the parties, respective closing submissions of the counsel, the opinion of the three assessors and the summing up, I now proceed to pronounce the judgment as follows.
5. The prosecution and the defence have agreed in the agreed facts that the victim came to the house of the accused to drop the lunch box of the accused's son on 9th, 19th of July

2014 and 4th, 5th, 6th, 7th, of August 2104 respectively. However, the accused in his evidence stated that the victim came to his house by her own and made plans prior to make few of such visits through Saimoni. Moreover, the prosecution and the defence have agreed that the accused and the victim had sexual intercourse on the 8th of August 2014 at the house of the accused. In contrast, the accused in his evidence said that he did not have sexual intercourse with the victim on the 8th of August 2014 as she was having her menstruation. I accordingly find the evidence of the accused was not consistence with the agreed fact tendered by the parties. Therefore, I do not find the evidence of the accused as truthful and credible. Moreover, I find the evidence adduced by the defence failed to make any reasonable doubt in the prosecution case.

6. The victim in her evidence explained the reason why she had to continuously go to the accused's house on eight separate occasions. She was alone at her house, which is very close to the house of the accused. She said that if she did not go, he will come and do something. Her explanation is probable. The victim was consistence in her evidence. I accordingly accept her evidence as truthful, credible and probable.
7. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of the three assessors. I accordingly hold the prosecution has successfully established the accused is guilty for each of these eight counts beyond reasonable doubt.
8. In conclusion, I find the accused is guilty for each of these eight counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Decree and convict him accordingly.


R.D.R.T. Ragasinghe
Judge

At Suva

06th February 2017

Solicitors

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused

