

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 164 of 2015

[CRIMINAL JURISDICTION]

STATE

V

MITIELI KACIKACI

Counsel : Ms. M. Chowdhury for State
Mr. L. Qetaki for Accused

Dates of Hearing : 05th - 06th September 2016

Date of Summing up: 08th September 2016

Date of Judgment : 09th September 2016

JUDGMENT

1. The accused is charged for the following offence;

Statement of offence

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

Particulars of offence

MITIELI KACIKACI on the 29th May 2014 at Nasinu in the Central Division had carnal knowledge of Torika Korotabua without her consent.

2. The assessors have returned with a unanimous opinion that the accused is not guilty of the above charge.

3. I direct myself in accordance with the summing up delivered to the assessors on 08th September 2016 and the evidence adduced during the trial.
4. The complainant was the only witness called by the prosecution. The accused gave sworn evidence.
5. The accused admits that he had sexual intercourse with the complainant, but he says it was consensual. Therefore the issue before the assessors was whether the complainant consented for the accused to penetrate her vagina with his penis and whether the accused knew or believed that she was not consenting or the accused was reckless as to whether or not she was consenting.
6. I have carefully observed the demeanour of the complainant when she gave evidence and considered the evidence she gave in court. This incident has taken place in the middle of the night at the residence of the complainant. There was no evidence that the complainant was disturbed by the presence of the accused inside her house at the time of offence. The evidence does not suggest that the complainant considered the accused as an intruder. Though the complainant repeatedly said that she gave her consent only because she was afraid that the accused would do something to the children who were there with her, there was no evidence that the accused made such a threat.
7. There was no evidence that the complainant at any point refused to have sexual intercourse with the accused or indicate to the accused in any way that she does not want to have sexual intercourse with him. However, the complainant said in her evidence that she said 'no' when the accused asked her whether his friend can also have sexual intercourse with her. This particular evidence suggests that the complainant was in a position to refuse that request made by the accused soon after the incident in question and she was not afraid to do so; and the accused did care whether or not she would consent to have sexual intercourse with his friend.
8. It is pertinent to note that, during cross examination, the complainant clearly contradicted her own evidence by admitting that she felt embarrassed when she

came to know that the children had seen her having sexual intercourse with the accused and that is why she said that she did not consent. This was not clarified during re-examination.

9. Having carefully considered the complainant's evidence and the evidence given by the accused, I am not convinced that the complainant's evidence was credible and reliable. There is a serious doubt as to whether or not she consented to have sexual intercourse with the accused. Therefore, the complainant's evidence does not establish the offence of rape beyond reasonable doubt.
10. Therefore, the unanimous opinion of the assessors that the accused is not guilty of the offence of rape as charged is not perverse. It was open for them to reach that conclusion based on the evidence.
11. I concur with the unanimous opinion of the assessors. I find the accused not guilty of rape and acquit him accordingly.



Vinsent S. Perera
JUDGE

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