

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 132 of 2016

[CRIMINAL JURISDICTION]

STATE

V

INOKE LAGIVERE

Counsel : Ms. S. Serukai for State
Ms. E. Radrole for Accused

Hearing on : 23rd - 25th May 2017

Summing up on : 29th May 2017

Judgment on : 29th May 2017

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "VR".)

JUDGMENT

1. The accused is charged with 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

INOKE LAGIVERE on the 26th day of February 2016, in Naqia Village, Tailevu in the Central Division had carnal knowledge of VR without her consent.

2. Initially, one Tevita Veikau was also charged with the offence of attempt to commit rape. A finding of not guilty was recorded in respect of Tevita Veikau pursuant to section 231(1) of the Criminal Procedure Act 2009.
3. The assessors have returned with a unanimous opinion that the accused is not guilty of the above offence, but guilty of the offence of defilement.
4. I direct myself in accordance with the summing up delivered to the assessors on 29th May 2017 and the evidence adduced during the trial.
5. The prosecution called three witnesses including the complainant. The accused gave sworn evidence and called one witness.
6. The accused admits that he had sexual intercourse with the complainant, but he says it was consensual. The main issue to be decided in this case is whether the complainant consented or not.
7. Considering the demeanour of the complainant when she gave evidence and the account she gave of what happened on 26/02/16, I am not satisfied beyond reasonable doubt that the complainant did not consent for the accused to penetrate her vagina.
8. The complainant said in her evidence in chief that the accused called her on her way home from her aunt's house and that Tevita followed her when she was on her way home from the accused's house. But she had mentioned in the statement she gave to the police that it was Tevita who called her from the accused's house. During cross examination she said, what she said in court is the correct version. In her evidence in chief she said she could not shout because the accused was covering her mouth with his hand. During cross examination she said that Tevita was covering her mouth. The complainant did not offer any explanation for the inconsistencies in her evidence.

9. The complainant said that her mother tried to smack her but she ran inside the house. The mother who was the second prosecution witness said that she slapped on the complainant's arms and the complainant started talking thereafter.
10. Therefore, there are unexplained inconsistencies in the complainant's evidence and moreover, the complainant's version is not consistent with her mother's version with regard to what took place during their encounter after the incident.
11. The evidence adduced in this case strongly suggests that the complainant had made up the allegation that the accused raped her because of her fear to tell the truth to her mother.
12. All in all, I find that the prosecution has failed to prove beyond reasonable doubt that the accused had committed the offence of rape.
13. I accept the complainant's evidence that her date of birth is 22/03/01. Therefore, she was 14 years at the time of the alleged incident. It is an offence to have unlawful carnal knowledge of a person of or above the age of 13 years and under the age of 16 years.
14. The position taken up by the accused was that he did not know the complainant's age. The accused admits that the complainant is his cousin. Considering that the accused and the complainant are cousins and they are from the same village, it is difficult for me to believe that the accused was unaware of the complainant's age at the time of the incident. However, even if the accused was unaware of the complainant's age, it is not a defence when it comes to the offence of defilement.
15. It is a defence to this offence if it appears that the accused had reasonable cause to believe, and did in fact believe, that the complainant was of or above the age of 16 years. The evidence in this case does not in any way suggest that the accused had reasonable cause to believe that the complainant was of or above the age of

16 years at the time he had sexual intercourse with her and he in fact believed that the complainant was of or above the age of 16 years at that time.

16. In view of the above, I am satisfied that the elements of the offence of defilement are proved beyond reasonable doubt.
17. Therefore, I concur with the unanimous opinion of the assessors. I find the accused not guilty of rape as charged and acquit him accordingly.
18. I find the accused guilty of the offence of defilement under section 215(1) of the Crimes Act and convict him accordingly.



A handwritten signature in black ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

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