

Case Name	S v Bechu
Topic	Belief that women are inferior to men or part of their personal property is obsolete
Category	EQUALITY - discrimination (sex); LIBERTY & SECURITY - rape; WOMEN - discrimination; WOMEN - rape;
Tribunal	Magistrate's Court, Levuka
Country	Fiji Islands (Pacific)
Case Date	02 Dec 1999
Judge(s)	Nadakitavuki M

B was charged with rape of his former girlfriend contrary to ss 149 and 150 of the Fijian Penal Code. He admitted in a police interview that he had committed the offence and that he had done so because he was drunk. He pleaded not guilty on the grounds that he believed that the victim had consented to sexual intercourse.

In convicting B, it was held that:

1. Rape requires that a man intends to have intercourse with another and he knows that the other person does not consent to intercourse or is reckless as to consent. In this context a man is reckless where he is aware that the other party may not consent but proceeds anyway either knowing that none exists or not caring whether it does or not. In determining whether he actually did believe the other person was consenting a jury may take account of the presence or absence of reasonable grounds for such belief.
2. Although B thought the victim consented, his actions and the admission that he assaulted her whilst drunk falls squarely within the definition of rape under s 149. Consequently B's confession is admissible as evidence of the facts stated by the victim that he was reckless in committing the offence due to his state of drunkenness.
3. Women are equal and must not be discriminated **against** on the basis of their gender. In this regard men need to be aware of the **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**, ratified by Fiji in 1981, under which the state must ensure that all forms of **discrimination against women** are eliminated. The belief that **women** are inferior to men or part of their personal property is obsolete and unacceptable.
4. Due to his reckless behaviour, B is guilty as charged and sentenced to five years imprisonment.

Legal Provision	Convention on the Elimination of Discrimination Against Women, (CEDAW), 1979
Citations	Criminal Case No 79/94, unreported; (1999) 3 CHRLD 155
Notes	For full text of the judgment click here