

**IN THE FIRST CLASS MAGISTRATE'S COURT
AT LEVUKA**

Criminal Case No. 79/94

BETWEEN:

STATE
Complainant

AND:

FILIFE BECHU
Defendant

JUDGMENT

2/12/99

The accused Filife Bechu has been charged with the offence of 'Rape' Contrary to Section 149 and 150 of the Penal Code.

It has been alleged that Filife Bechu on the 13th day of August, 1994 at Levuka in the Eastern Division, had unlawful carnal knowledge with Luisa Tuinabua without her consent.

Section 149 of the Penal Code, spells out the 'definition of rape' thus:

'Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act or in the case of a married woman, by personating her husband, is guilty of the felony termed rape.'

Section 150 of the Penal Code, explain the 'punishment of rape' thus:

'Any person who commits the offence of rape is liable to imprisonment for life, with or without corporal punishment.'

This case was first called in this court on 16/8/1994, when the charge was explained to the accused. He understood the nature of the charge, and elected Magistrates' Court Trial. He pleaded not guilty to the said charge.

The hearing was set for November 4th, 1994 and on that day the complainant was not present. She did not leave any forwarding address, to the police, which makes it quite difficult for the police to trace her. She did not appear in court for almost two years, and although the court had the inherent powers to acquit the accused pursuant to Section 210 of the Criminal Procedure Code, it saw fit to hear the case on two grounds:

- a) the offence per se, is quite serious and seemed prevalent in rural areas; and
- b) Levuka Court is being visited once a month by the Resident Magistrate Nausori thus giving the police sufficient time to prepare their case and on one occasion, the accused had jumped bail.

In a nutshell, the complainant gave her testimony in Court on 1/3/1996 as she travelled all the way from Bua.

The complainant knew the accused well and the question of identity is unnecessary in this case.

Secondly, the accused had told the court, under oath given on 8/10/99, that the victim is his girl friend.

It is for the court, to decide on the definition of rape, as above stated:

....."without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act or in the case of a married woman, by personating her husband"

Because of the nature of the offence the complainant's testimony, is recorded hereunder ad verbatim;

"I am from Wairiki village on Bua. I am now living there. I recall the month of July, 1994 I came to stay with my uncle. I was 20 years at that time. I recall the 13th of August, 1996, I came to attend a dance at Levuka Club. I came by taxi. I came alone from home. I met few of my friends at a mango tree near Levuka Club. It was about 7.30 p.m. After we met, we then proceeded to Levuka Club. I went back home after 12 midnight. At that time, I was staying at Ucuinacula. From Levuka Club, I took a walk to the Anglican church, where I boarded a van for home. I went alone. It was Saiasi Taufua's van. We then proceeded to Uluinacula where I resided. There was another person who boarded the van, one Filipe Bechu. He is the accused person. The accused boarded the van at the same place where I had boarded the van. At Uluinacula, I had asked the driver to stop, but the accused had told the driver to keep on driving. When we passed our home, we travelled on to Vouma. I told the driver that I wanted to go back home. The van turned around from there and proceeded back to Uluinacula. The van came to a stop at a spot between Waitovu and Vouma village. It was an empty place. At that time, there were four passengers remained inside the van. The accused got off at that point, he then asked me to get off and to accompany him. I then told him that the night was dark. I disagreed with his suggestion. The accused went and talked to the driver. The driver switched off the lights, the accused boarded the van and started assaulting me. The rest of the passengers still remain inside the van. I sat behind the driver. In the process of assaulting me, he was asking me to get off the van. The driver then told us to get off the van. He punched my right eye, my mouth and my left chest. The accused forced me by pulling me out of the van. When we stood outside the van, the accused had ordered the driver, to move away from there. The accused started punching me and dragged me to a nearby bush. He dragged me for about 10 metres away. I was crying all the time. The van had left by that time. Inside the bush, the accused told me to sit, I refused. The accused then punched my mouth and forced me to sit on the ground. He made me to lie down and pulled my jeans off and also my panties. He then lifted both of my legs and lay on top of me. All I knew that his penis was inserted into my vagina. He then had sexual intercourse with me. His penis was erected at that time. The intercourse lasted for about half an hour. The accused was fully drunk. After this incident, the accused then told me that he was going to give me \$20.00 the next day. I told him that I was going to report him to the police. He then replied that it did not bother him, whether I report the matter to the police or what. I then reported this incident to the police. Before I reached the police station, I met one Anare Ratu at Levuka Vakaviti Village. He questioned me, as to what was wrong with me. I was crying at that time. I then related to him what Filipe Bechu did to me. He then gave me his jacket to wear and also accompanied me to Levuka Police Station. I then lodged my report at Levuka Police station."

The victim was medically examined. Medical report tendered (Ex-1).

In reply to cross-examination, the victim had told the court that she did not give her consent to intercourse and that she was not drunk on the night of the alleged incident.

The medical report tendered as Exhibit 1, shows the following injuries:

'haematoma 4 x 4 cm on left lateral chest wall'

'haematoma 2 x 3 cm on left side of forehead near hairline'

'haematoma 2 x 2 and tenderness on 4 infraorbital region'

'the patient is not virgin - she was pregnant and delivered a baby on Feb. 13th, 1994 in Levuka Hospital'

'A boil on 4 mid-thigh region posteriorly bleeding'

'No evidence of sperm in the vaginal swab taken'

'No injuries to the genitalia'

Para. 14. Diagnosis.

'Injuries on the body could have been caused by hard blunt object'

This case was then adjourned at this point, as requested by the Prosecution, because one of their material witness, was not present in court. The case had to be adjourned no less than 14 times, which is not quite satisfactory, so to speak, in a criminal case.

On 8th April, 1999, one Anare Taqanavanua the PW2 of Nacobo gave his testimony in court and told the court the following:

I recall 13th August, 1998, I went to dance at Levuka Club. After the dance, I went to Vouma with a friend. We travelled by a van and arrived there before 2 a.m, I left that boy at Vouma and walked back to town. Before I reached Naisogo village, I saw a girl crying. She asked me to accompany her to the Police Station. She told me, she was raped ... I gave her my jacket to wear. She was dirty and wet. It was the first time, I met her. I then brought her to the police station.'

After five further adjournments, one Salasi Taufu the PW3, of Vuci road had told the Court, that in the month of August, 1994, he was living at Natokatau village, driving carrier 24 hours. On 13th August, 1994 at midnight he was on night shift and picked a job from Levuka Club. He then proceeded to Waitovu Village. He picked the accused and a lady from Levuka Club also two other boys. When they reached Waitovu village, the lady had then requested the PW3, to be dropped first at this end of the village. The accused then insisted that they should be dropped at the other end of the village, near a bridge. They did not pay their fare. The PW3, knew the accused well. They appeared drunk.

Cpl. 1386 Isimeli Savutini of Levuka Police Station is the PW4. He investigated this case at about 2 a.m. on 13th August, 1994. Luisa Tuinabua the PW1, was the complainant, who lodged her complaint at Levuka Police Station, accompanied by one Anare, the PW2.

Her complaint was that she was raped between Waitovu Village and Vouma village. She appeared in distress, crying all the time find it took sometime for her to come out with her complaint. She was sent to Levuka Hospital to undergo medical examination.

The scene was visited by the PW4 where one 10c and a 5c were found on the ground about 20 yards away from the main road. Grass seemed disturbed (in other words pressed against the ground). On 13th August, 1994, the accused was interviewed.

I refer to the English translation of the Interview Statement, taken from the Fijian Interview Statement, which writing I cannot read. (refer Ex - 3A).

Q. 20: Could you explain to me as to what happened next?

A. I told Luisa to get out, she refused. I then grabbed both of her hands then pulled her out.

Q. 21: When she came out, what about the van, was it stopped there or already left?

A. Already left.

Q. 22: Could you tell me what did you do to Luisu when you were both there alone?

A. I started punching her as she refused to go. I then dragged her and forced her to lie down. I then lay on top of her and had sexual intercourse with her.

The rest of the interview statement recorded from the accused, the accused had admitted that the victim did not like what the accused did to her, and that the accused assaulted her, by punching her back and shoulder and the allegation of rape is true as the accused was jealous, because the victim also involved with other men.

In his charge statement, the accused had unequivocally stated that he used to go around with the victim before, but he cannot understand why she lodged her report to the police. The victim also involved with other men a lot and the accused did this act because he was drunk.

The victim, no doubt had an intercourse with the accused on the night in question. Such intercourse, with the accused person was obtained, without her consent. Even, if she had consented, to intercourse as appeared to be the case in accused's belief, being his former girl friend, the definition of 'rape' under Section 149 of the Penal Code falls squarely against the accused's belief, who was quite drunk, at the time of the alleged incident.

... "without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm;"

I cannot find any other avenue, where evidence adduced by the police may go in accused's favour. I treated his confession as admissible evidence of the fact stated.

Rape required that a man intends to have intercourse with another and that the man knows that the other person does not consent to intercourse or is reckless as to whether that other consents or not. I refer to Sexual Offences Act 1956, s 2(2). Section 1(2) of the Sexual Offences (Amendment) Act 1976 (UK), provides that a jury may take into account the presence or absence of reasonable grounds for belief in determining whether a man actually did believe that the other person was consenting.

In this context a man is reckless where he is aware that the other party may not be consenting but proceeds to have intercourse with the other party either knowing that that party was not consenting or not caring whether the other party consented or not.

Cases cited:

(*Khan* [1990] 1 WLR 13;
S (Satnam) (1984) 78 Cr. App.R. 149;
Breckenridge (1983) 79 Cr. App.R. 244;
See *Pigg* [1982] 1 WLR 762,
which must now be taken to have wrongly decided.)

I have come to the conclusion, after carefully considering the fact of this case that the accused was reckless in committing this offence, because of his state of drunkenness, he is therefore found guilty and convicted as charged.

Pros: 2 Pc's - Admitted by the Accused.

This is recorded in 1994.

Mitigation:

34 years of Waitovu village.
Single man. Employed by Patterson Bros.
Asking for forgiveness.
Looking after six animals. That is all.

Court:

Women are your equal and therefore must not be discriminated on the basis of gender.

Men should be aware of the provision of 'Convention on the Elimination of all forms of Discrimination against Women' (CEDAW), which our country had ratified in 1981. Under the Convention the State shall ensure that all forms of 'discrimination against women' must be eliminated at all costs.

The Courts shall be the watchdog with this obligation. The old school of thoughts, that women were inferior to men; or part of your personal property, that can be discarded or treated unfairly at will, is now obsolete and no longer accepted by our society.

I hope that this sentence imposed on you, shall be a deterrent to all those, who are still practising this outmoded evil and cruel behaviour.

You are sentenced to 5 years imprisonment.

Right of appeal within 28 days.

V.D. Nadakultavuki
RESIDENT MAGISTRATE