

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 156 OF 2016**

**STATE**

**-v-**

**RAVINDRAN MANI**

**Counsel** : **Ms. S. Naibe for the State**  
**Accused** : **Ms. V.Narara with Ms. Kumar for the**

**Date of Summing Up** : **30 August, 2018**

**Date of Judgment** : **5 September, 2018**

*(Name of the victim is suppressed. She is referred to as AS)*

**JUDGMENT**

1. The Accused was charged with the following counts.

## COUNT 1

### *Statement of Offence*

**INDECENT ASSAULT**: Contrary to Section 212 (1) of the Crimes Decree 44 of 2009.

### *Particulars of Offence*

**RAVINDRAN MANI**, between 27<sup>th</sup> November 2015 and January 2016 at Lautoka in the Western Division, unlawfully and indecently assaulted AS.

## COUNT 2

### **Representative Count**

### *Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of the Crimes Decree 44 of 2009.

### *Particulars of Offence*

**RAVINDRAN MANI** on the 1st of August, 2016 at Lautoka in the Western Division, unlawfully and indecently assaulted AS.

## COUNT 3

### *Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

### *Particulars of Offence*

**RAVINDRAN MANI** on the 1st of August, 2016 at Lautoka in the Western Division, penetrated the anus of AS a 12 year old girl, with his penis.

2. The trial was conducted before three Assessors. At the close of the Prosecution's case, the Court found no evidence to maintain the first count of Indecent Assault hence the Accused was acquitted of the first count. The Court consulted the opinion of the Assessors on the 2<sup>nd</sup> and 3<sup>rd</sup> counts.
3. After a short deliberation of 30 minutes, the Assessors unanimously found the Accused guilty on the 2<sup>nd</sup> count and found him not guilty on the 3<sup>rd</sup> count which is Rape.
4. I direct myself in accordance with my own Summing Up and review evidence led in the trial. Having concurred with the opinion of Assessors, I pronounce my judgment as follows.
5. Prosecution called four witnesses, the victim, two of her classmates and her teacher. Prosecution's case is substantially based on the evidence of the child victim. Other witnesses were called to prove the consistency of the conduct of the victim.
6. Accused gave evidence in his defence. Defence's case is one of denial. Accused denies committing any of the sexual offences mentioned in the information.
7. Prosecution heavily relies on recent complaint evidence to prove the consistency of the conduct of the victim. The victim had promptly complained to two of her friends in school after the alleged incident and then to the teacher two days thereafter. She was crying and in a distressed condition when she reported the matter to her friends and teacher. The victim was 12 years old student at the time of the offence. She had no apparent motive to make up an allegation against the accused who is her biological father.

8. However, the assessors found the accused not guilty on the third count of rape. By coming to that conclusion they have basically accepted the evidence of the victim but not the evidence as to anal penetration.
9. To prove the third count, Prosecution must prove that the Accused penetrated the anus of the victim to some extent.
10. The victim said in her evidence that on the 1<sup>st</sup> August, 2016, her father took her to his bedroom, and, whilst in his bedroom, he made her lie down on his bed and started kissing her lips, breast and vagina. Then he, while sitting on his knees, made her lie down on her stomach and put his 'sperm' on her 'back side'. She said it was little bit sore. She described 'sperm' as his "private part" and her back side as her 'bum'. She then said that father put his private part inside her bum. She felt weird; she didn't like it. She told her father not to do it but he kept on doing it.
11. Then she said that her father made her turn around and put his private part in her vagina. She shouted loudly and told him to stop. Then he just left her. She then ran to her room and got dressed and cried in her room. She said that her private part was a bit sore. She said her brother was sleeping in his room when all these things were happening. She said that she wanted to shout but father closed her mouth with his hand.
12. According to the victim's evidence, the alleged incident happened on Monday the 1<sup>st</sup> August, 2016. When she went to school on the following day (Tuesday) she had relayed the incident to two of her classmates, Arishna and Kritika. She had told Arishan that, her father, on the 1<sup>st</sup> of August 2016, had kissed her face and her private part. Then father told her to go inside a room. When she lay on the bed, her father came and asked her to take off her clothes. She didn't want to

take off her clothes but father forced her. After that her father was kissing her while saying some indecent words.

13. The victim had told Kritika that her father was doing bad things to her which she really didn't like. Her teacher Subashni said that the victim didn't tell much but she just said that whatever the father was doing, she didn't like it.
14. The police recorded victim's statement on the 4<sup>th</sup> August, 2016. In her statement to police, she had never mentioned that her father had turned her around and inserted his private part in her vagina. She had only told police that *"he turned me on the bed and he put his main part [penis] in my back main part [buttocks]"*. The victim in her evidence admitted that she had never mentioned in her previous statement that his father had turned her around and put his private part in her vagina. In her explanation for this omission, the victim said that she forgot to tell some of the things that happened and when she read the statement before trial she could remember the things she forgot.
15. In her evidence, the victim had never used the words 'penis' or 'buttocks'. It appears that those words have been interpolated (within brackets) by the police officer who recorded the statement. The victim's first version in court is that he put his 'sperm' on her back side. When the prosecutor kept on asking her to describe 'sperm' and 'back side', she described 'sperm' as his private part and her back side as her 'bum'. When she was asked by the court to draw and depict father's private part on a piece of paper, she drew something that resembles penis. In her drawing, the bum she drew resembles buttocks.
16. It is agreed that the victim was medically examined on the 4<sup>th</sup> August, 2016. The Prosecution did not tender the medical report nor called the doctor to give evidence. It can be assumed that if the victim was penetrated with accused's penis she ought to have received some injuries in her anal cavity that could have

been noted by the doctor at the medical examination. It could therefore be assumed that the prosecution suppressed the medical report because it did not support their version.

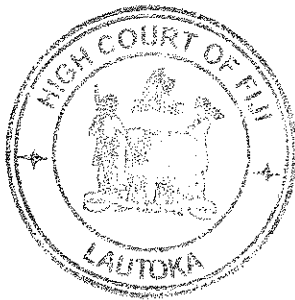
17. It should however be accepted that no medical corroboration is required to bring home a conviction in a rape case. The victim is a child witness who was 14 years old at the time she gave evidence. The court, having been satisfied that the victim understood the nature of an oath and appreciated the need to tell the truth, took her evidence on oath. Therefore, proviso to Section 10 of the Juvenile Act [if it is still valid despite the decision of Gounder J in *The State v AV* (Criminal Case No: HAC 192/2008, 2 February 2009)] does not apply to the present case.
18. In that case (AV), the child witness had given evidence under oath and therefore, Calanchini P acknowledged that the girl's evidence did not have to be corroborated. However, Calanchini P concluded his judgment by saying that "*children, especially young children, are still young children with all the frailties that are associated with childhood*". Calanchini P did not spell out what he meant by that, but the Supreme Court in *Kumar v State* [2016] FJSC 44; CAV0024.2016 (27 October 2016) assumed that he thought that for one reason or another a child's evidence may not be as reliable as that of an adult. (Per Keith J; para 28)
19. The Supreme Court in *Kumar*, (*supra*) having disagreed with Gounder J's finding in *State v AV* that the requirement at common law for a warning of the danger of convicting a defendant on the uncorroborated evidence of a child is inconsistent with the Constitution and therefore invalid, further observed:

*" there may be some cases in which the trial judge thinks that a warning of this kind is desirable. That may have something to do with the nature of the child's evidence, or the way it was given, or it may have something to do with the assessors themselves. The trial judge is in the best position to assess that. So although there should no longer be any requirement on*

*trial judges to give a warning of this kind, they may do so if they think that it is appropriate in a particular case".*

20. In view of this observation, it is my considered opinion that this is one such case where a conviction is not safe on unsupported evidence of the child witness in respect of the rape charge. There is no clear evidence that the Accused penetrated the anus of the victim with his penis. The benefit of doubt should be given to the Accused.
21. In light of the above mentioned observation of the Supreme Court and after taking into consideration the evidence of the child victim in this case, I take the view that bringing home a rape conviction on unsupported evidence of the child victim is unsafe. I therefore endorse the unanimous opinion of Assessors on the rape charge (3<sup>rd</sup> count).
22. The 2<sup>nd</sup> representative count is about sexual assaults. I find that all elements of Sexual Assault are established by the evidence led by the Prosecution beyond reasonable doubt. Merely because the Assessors rejected the evidence on the count of rape it does not mean that child victim's whole evidence should also be rejected. My directions in the summing up allow the Assessors to accept some parts of the evidence of a witness and reject the other parts.
23. The victim said that in the first incident, her father undressed her and started kissing her lips and came down and kissed her breast and vagina. In the second incident, he made her lie down on his bed and then he took out the blanket and started kissing her lips, breast and vagina. I am satisfied that all elements of Sexual Assault are satisfied.

24. Prosecution proved the 2<sup>nd</sup> charge beyond reasonable doubt. I agree with the unanimous opinion of Assessors and find the Accused guilty on the 2<sup>nd</sup> count.
25. I also accept the opinion of Assessors that the Accused is not guilty on the third count of Rape.
26. Accused is convicted on the 2<sup>nd</sup> count and acquitted on the 3<sup>rd</sup> count accordingly.
27. That is the Judgment of this Court.



Aruna Aluthge

Judge

**AT LAUTOKA**

**5<sup>th</sup> September, 2018**

**Solicitors: Office of the Director of Public Prosecution for State**

**Legal Aid Commission for Accused**