

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 155 OF 2015

BETWEEN:

THE STATE

AND:

GANGA RAM

Counsel: Mr S Seruvatu for the State
Ms S Veitokiyaki & Mr J Prakashan for the Accused

Date of Hearing: 21-22 May 2018

Date of Judgment: 22 May 2018

JUDGMENT

- [1] The Accused, Ganga Ram is charged with a representative count of rape. The particulars of the charge allege that between July 2010 and December 2010, the Accused had carnal knowledge of the complainant without her consent. After a two day trial, two assessors have found the Accused guilty while one assessor has found him not guilty.
- [2] I direct myself in accordance with my summing up. I bear in mind that the prosecution carries the burden of proof to establish guilt beyond reasonable doubt. Although the Accused gave evidence, he bears no onus to prove anything. His evidence is that he had sexual intercourse with the complainant only once in January 2011, and that was consensual. He denies having sexual intercourse with the complainant using force and without consent between July 2010 and December 2010.

[3] The resolution of the charge depends upon whether the complainant's account that the Accused forced her to have sexual intercourse is true. She said the incidents of rape were repeated between July 2010 and December 2010. The incidents occurred while she went to the Accused's house to do chores in return for bus fare money to go to school. She was in high school and was going to turn 18 years in December of that year. She did not complain to anyone because she was afraid of the consequences of her reporting the incident. She went back to his home after the first incident because she trusted him. He was his uncle (dad's cousin) and twice her age. She became pregnant and when a neighbour prodded she revealed the Accused made her pregnant.

[4] The complainant struck me as an honest and reliable witness. Her reluctance to diverge in detail the extent of her abuse to police by a person who was a relative is understandable. The Accused in his evidence gave an impression that he was the victim and the complainant is the one who seduced him to have sexual intercourse with her after she turned 18 years old. The Accused was twice the complainant's age and her uncle. I don't believe his evidence that it was the complainant who seduced him to have consensual sexual intercourse with her. I believe the complainant's account in court that the Accused forced her to have sexual intercourse with him. I feel sure that the Accused had used force to obtain the complainant's consent and he knew she had not consented to sexual intercourse.

[5] I find the Accused guilty of rape as charged in the representative count and convict him accordingly.



A handwritten signature in black ink, appearing to read "Daniel Goundar".

Daniel Goundar

JUDGE

At Lautoka
22 May 2018

Solicitors:

Office of the Director of Public Prosecutions for the State
Pillai, Naidu & Associates for the Accused