

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 130 OF 2016

STATE

v

SAMUELA TAWANANUMI

Counsel : Ms S Navia / Ms S Naibe for State
Ms V Narara for Accused

Date of Summing Up : 29th November, 2018

Date of Judgment : 4th December, 2018

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

JUDGMENT

1. The accused is charged with one count of Rape and one count of Sexual Assault. The information reads as follows:

First Count

Statement of Offence

Sexual Assault: Contrary to Section 210 (1) (a) of the Crimes Act of 2009.

Particulars of Offence

SAMUELA TAWANANUMI between the 1st of November, 2015 and 30th of November, 2015 at Lautoka in the Western Division unlawfully and indecently assaulted AK by touching her vagina.

Second Count

Statement of Offence

Rape: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act, 2009.

Particulars of Offence

SAMUELA TAWANANUMI between the 1st of November, 2015 and 30th of November, 2015 at Lautoka in the Western Division penetrated the vagina of AK with his penis, a child under the age of 13 years.

2. Prosecution closed its case having called three witnesses. At the end of Prosecution's case, court found that there is a case to answer and the accused was put to his defence. Accused exercised his right to remain silent and did not call any witnesses.
3. After a deliberation of half an hour, assessors returned with a unanimous opinion of 'guilty' on both counts.
4. Having concurred with the opinion of assessors, I proceed to give my reasons as follows.
5. To find the accused guilty of Rape in this case, the Prosecution must prove beyond reasonable doubt that the accused penetrated victim's vagina with his

penis. To find the accused guilty of Sexual Assault, The Prosecution must prove beyond a reasonable doubt that the accused touched victim's vagina.

6. Prosecution called the victim, her grandmother Ana and doctor Konrote. I am satisfied that the evidence adduced by the Prosecution is credible and believable. The victim is a reliable witness and her evidence is further bolstered by the recent complaint evidence, distress evidence and the medical evidence of the doctor.
7. The victim had complained to her grandmother nearly 5 months after the alleged incident. She had made the complaint when she was questioned by her grandmother who had observed victim's abnormal behaviour.
8. There are reasonable explanations for the delay in reporting the incident. The victim said that her mouth was blocked; she said she was scared of her father because she was told not to tell the incident to her mother and if she did he will kill her. The victim had not complained to her grandmother during school break. However grandmother had noticed victim's abnormal behavior. When the victim resumed schooling, her teacher had also noted victim's changed behaviour at school. Grandmother kept on asking what had gone wrong. The matter was eventually relayed to her grandmother when the accused had left the house.
9. Although the complaint was made approximately five months after the alleged incident, I accept it as a "recent complaint" in the circumstances of this case. The complaint of the victim is consistent with her allegation and her evidence in court. Ana's evidence bolstered the Prosecution's case.
10. Evidence of distress adduced by Ana is also consistent with the rape allegation. I accept that the distress condition of the victim is linked to the rape allegation and nothing else.

11. The medical evidence is also consistent with victim's evidence about the allegation of rape. The doctor found that victim's hymen not being present. Victim was only nine years old at the time of the medical examination and the doctor ruled out other possibilities that a hymen may not be present in a 9 year old girl.
12. The doctor had not observed any laceration, bruising or tear in or around victim's vagina. Based on this finding, the Defence Counsel argues that the medical evidence is not consistent with a rape allegation.
13. The doctor had examined the victim approximately five months after the alleged incident which is sufficient period of time, according to doctor's evidence, to heal a wound or erase a scar. Doctor said that if there were tears in the vaginal area, they would have been obvious only if they had happened within a recent period. She said that the time taken to heal a wound or tear is dependent on the circumstances of the wounding. She said that in the majority of the cases where a child is alleged to have been abused, she had not found any physical abnormality in the victim. I find that doctor's evidence is not inconsistent with a rape allegation.
14. There is no obvious reason or motive on the part of the victim to fabricate a serious allegation of this nature being brought against her own father.
15. I observed the demenour of the victim carefully. Her conduct and demeanour are consistent with her honesty. I am satisfied that the victim is telling the truth when she said that the accused touched her mimi (vagina) and put his *mimi* or penis into her *mimi* or vagina.
16. I accept the unanimous opinion of assessors. Prosecution proved each charge beyond reasonable doubt. I find the accused guilty on each count as charged.
17. The accused is convicted accordingly.

18. That is the judgment of this Court.



A handwritten signature in black ink, appearing to read "Aruna Muthge".

Aruna Muthge

Judge

AT LAUTOKA

4th December, 2018

Solicitors: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused