

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 158 OF 2014

STATE

-v-

CHANDAR KANT

Counsel : **Ms. J. Fatiaki for the State**
Ms. R. Kumar for the Accused

Date of Summing Up : **01st March, 2016**
Date of Judgment: : **02nd March, 2016**

(Name of the Victim is suppressed)

JUDGMENT

1. The Accused was charged with following counts and was tried before three Assessors.

COUNT 1

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

CHANDAR KANT between the 1st of January 2013 and the 31st of April 2013 somewhere between Lautoka and Sigatoka in the Western Division, unlawfully and indecently assaulted **AT** by touching her vagina.

COUNT 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

CHANDAR KANT between the 1st of January 2013 and the 31st of April 2013 somewhere between Lautoka and Sigatoka in the Western Division, unlawfully and indecently assaulted **AT** by making her sit on top of his lap whereby she felt his erected penis on her backside.

COUNT 3

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

CHANDAR KANT between the 1st of January 2013 and the 31st of April 2013 at Sigatoka, in the Western Division, penetrated the vagina of **AT**, a 9 year 5 months old girl, by inserting his finger into her vagina.

2. On 1st March, 2016, Assessors unanimously found the Accused guilty of all the counts.
3. I direct myself in accordance with my own Summing Up and review the evidence called in the trial. I pronounce my judgment as follows.
4. The Prosecution based its case substantially on the evidence of the victim. I am satisfied that the evidence she gave in Court is truthful and trustworthy.
5. There is no dispute in this case with regard to the identity of the Accused. Victim identified the accused by name. Accused admitted that

victim was in his custody for two months and accompanied her to Sigatoka and Suva during the relevant period.

6. Victim was only twelve years old at the time she gave evidence. She had no apparent reason or motive to fabricate a story against the Accused to put him in trouble.
7. Victim, under cross examination, said that she told aunty Rota about all the bad things done to her because she wanted to stay with her aunty in Suva. She explained, in re-examination, why she did not want to go with the accused. She said that she feared he will do more bad things to her.
8. Accused blamed aunty Rota for trapping him. Court can't see why she wanted to trap him. Accused had met aunty Rota for the first time in Suva.
9. According to Litia's evidence, victim did not report any of the incidents to her mother when she spoke to her over the phone from Suva. She was speaking to her mother in the presence of the accused. However, victim said in her evidence that she did not get a chance to talk to her mother when she was in Suva. Even if she had a chance to speak, it is in accused's presence that she had to talk. In such a situation she can't be expected to complain to her mother about the incidents.
10. Victim did not complain to the LTA officer who came to the bus. Accused was present at that time also and he even slapped her blaming her being naughty. She did not complain about incidents of sexual nature when she met the policeman in Nine Miles. That time too, the Accused was present. Complainant said she was warned not to tell anyone and if she were to tell anyone 'he will murder her'. She really wanted to tell accused's wife but she was so scared.
11. Undoubtedly, there is a considerable delay in reporting the incidents. However, there are valid reasons available in evidence explaining the

delay. Accused wielded some authority over the victim until she went to aunty Rota in Suva. When victim felt secured, she told aunty Rota that accused always used to touch her body. That was several months after the alleged incidents. What prompted her finally to complain was the pain she developed in her vaginal area. She told everything to police when she was interviewed.

12. In light of directions I gave in respect of late complaint evidence and on how to approach evidence of child victims in determining whether the victim had any reason that prevented her from complaining promptly, assessors were justified in coming to the conclusion they reached. Victim's reluctance to report the incident promptly could have been due to fear, shock, confusion or shame, coupled with the cultural taboos existing in her society in relation to an open and frank discussion of matters relating to sex with elders.
13. Prosecution did not call aunty Rota as a witness. She was based in Suva. It is not difficult to understand the hardship that would have been caused to the Prosecution in calling her all the way from Suva. There is no need in Fiji to corroborate the evidence of a victim of a sexual offence by an independent source either. In some cases, unconnected to sexuality, a Court may warn itself about the inherent dangers of convicting on unsupported evidence of a particular witness. I do not consider victim in this case to be one such witness.
14. I observed the victim giving evidence in court. She was forthright and not evasive. Her demeanor was consistent with her honesty.
15. Two omissions were highlighted by the Defense Counsel *vis-à-vis* her previous statement to police. Those are not material omissions that could affect the credibility of her evidence.

16. Accused gave an innocent self-serving version to escape criminal liability. He failed to create any doubt in the prosecution case.
17. Accused never mentioned to police that he accompanied the victim to Sigatoka on that particular day where two major incidents alleged to have taken place. That is a material omission in his statement to police that would tantamount to contradiction between his evidence and his version to police at the interview.
18. Accused told for the first time in his evidence that one Fijian boy was also in the bus early in the morning the day he was heading for Sigatoka with the victim. His Counsel never asked the victim when she was in the witness box whether a Fijian boy was also in the bus. Accused's evidence is not consistent with the stance taken by his Counsel in the course of cross examination of prosecution witnesses.
19. Accused tried to convince assessors that there is no room left between the driving seat and the steering wheel for her to sit when the driver is seated in the driving seat of a 'modified Classic bus' he was driving. Victim was only nine year old small girl at that time. Assessors being commuters who are familiar with Classic buses in Fiji disbelieved the Accused's evidence.
20. I observed Accused's demeanor. He was evasive and not straight forward in his evidence.
21. I considered each charge separately. Prosecution has discharged its burden and proved each element of each charge beyond reasonable doubt.
22. It is not necessary to prove full penetration in order to prove the charge of rape. Even a slight penetration is sufficient. Victim said that the accused started touching her private part and tried to poke her private

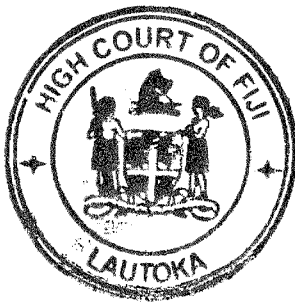
part. When the State Counsel asked her as to how he touched her private part, she demonstrated to Court the way he touched.

23. Victim had developed a pain in vaginal area somewhere in November 2013. Doctor said that victim's vaginal muscles looked abnormally soft and her hymen, from 3 o'clock position to 9 o'clock position, was not visible. Doctor also found her posterior vaginal wall abnormally soft, not in keeping with normal vaginal condition of a child. Doctor's medical findings were consistent with vaginal penetration and possible repeated penetration with a blunt object.
24. There is a considerable time gap between last day of the time period mentioned in the amended information and the date of the medical examination. However, Defence failed to create any doubt that the abnormal medical condition consistent with rape observed in the victim would have been caused by any other way than by the act of the accused.
25. I gave the following direction to assessors as to how they should approach evidence of a child witness:

"Children may not fully understand what it is that they are describing, and they may not have the words to describe it. They may, however, have come to realize that what they are describing is, by adult standards, bad or, in their perception, naughty. They may be embarrassed about it, and about using words they think are naughty, and therefore find it difficult to speak".

26. Having considered the evidence and demonstration of the victim as to how the accused touched her private part and also the doctor's evidence, it is open for the assessors, in light of the direction I gave, to find that the Accused penetrated her vagina with his finger.

27. Acts of touching vagina of a girl with hand and touching naked penis on the back side of a girl constitute Indecent Assaults.
28. I agree with the unanimous opinion of the assessors. Their opinion is not perverse. It is open for them to reach such a conclusion on the evidence led in the trial.
29. Prosecution has proved each charge beyond reasonable doubt. Accused is convicted of all the charges accordingly.
30. That is the judgment of this Court.




Aruna Aluthge
JUDGE

AT LAUTOKA
02nd March 2016

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