

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 121 OF 2013

BETWEEN : STATE

AND : AMRIT LAL

Counsel : Mr. S. Nath for State
Mr. J. Singh with Ms. Singh for the Accused

Date of Hearing : 24th - 26th of August 2016

Date of Closing Submissions : 29th of August 2016

Date of Summing Up : 29th of August 2016

Date of Judgment : 31st of August 2016

JUDGMENT

1. The name of the victim is suppressed. The victim will be referred as AA.
2. The accused is being charged with two counts of Rape contrary to Section 207 (1) and (2) (b) of the Crimes Decree and one count of Indecent Assault contrary to Section 212 (1) of the Crimes Decree. The particulars of the offences are that;

First Count

Amrit Lal, between the 1st January 2013 and 28th of April 2013, at Nadi in the Western Division, inserted his finger into the vagina of AA, without her consent,

Second Count,

Amrit Lal, between the 29th of April 2013 and 12th of May 2013, at Nadi in the Western Division, inserted his finger into the vagina of AA, without her consent,

Third Count,

Amrit Lal, between the 1st January 2013 and 12th of May 2013, at Nadi in the Western Division, unlawfully and indecently touched the breast and body of AA without consent,

3. The accused pleaded not guilty for these three counts. The matter then proceeded to hearing. The hearing commenced on the 24th of August 2016 and concluded on 26th of August 2016. The prosecution presented evidence of four witnesses including the victim. The accused gave evidence at the conclusion of the prosecution case. However, he did not call any other witnesses for the defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then made my summing up.
4. The three assessors returned with split verdict. Two of the assessors found the accused is not guilty for the two counts of rape, while one of them found him guilty for the two counts of rape. Two of the assessors found the accused is guilty for offence of Indecent Assault, while one of them found him not guilty for the same. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
5. Having carefully considered the evidence adduced during the hearing, the agreed facts tendered by the parties, respective closing submissions of the

counsel, the opinion of the three assessors and the summing up, I now proceed to pronounce the judgment as follows.

6. The victim was thirteen years old in 2013. The accused is her biological father. She was brought from Taveuni to Nadi together with her elder sister by her mother to live with the accused in order to obtain better education. She was then matriculated at AD Patel Memorial Primary School. During the first term of the school, the accused came to the victim while she was sleeping with her sister on a bunk bed. He then removed her cloths and touched her breast and body. While doing it, the accused inserted his finger into her vagina without her consent.
7. The prosecution further alleges that the two other sisters of the victim came to stay with them during the first term school holidays. She was then shifted to another room to sleep. The accused came to her while others were asleep in the night and started to touched her breast and body. He then removed her short and undergarments, and inserted his finger into her vagina. He threatened her that he will kill and burry her somewhere if she tells this to anyone else.
8. The accused denies all of these allegations. He stated that the victim wanted to go back to her grandparents in Taveuni as she was grown up with them. He promised her that he will arrange things for her to go back if he managed to contact her mother or any other family members during the school holidays. However, he could not send her back as promised. The victim then spoke to him roughly and said that he will see the consequence of not sending her back to Taveuni.

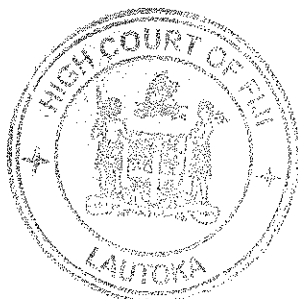
9. The prosecution and the defence presented conflict versions of events. The prosecution alleges that the accused committed these crimes on the victim in private while other siblings of her were asleep. The accused denies all of these allegations. Under such circumstances, the court has to determine which version of the event is credible and reliable to believe. The accused is not required to adduce evidence to prove his innocence. It is sufficient to adduce some form of evidence to satisfy the court that his version of event could be reasonably true, although the court is not convinced it is true. Irrespective of the evidence adduced by the defence, the prosecution has the onus to prove the charges beyond reasonable doubt.
10. Accordingly, I first draw my attention to determine whether the evidence given by the victim is credible and reliable.
11. The victim in her evidence stated that she told her elder sister about what her father had been doing to her when the elder sister asked her why she always looked scared. Having heard of these allegations the sister told her that they cannot do anything, therefore, she has to inform it to the teacher in charge of the girls at the school. The victim then informed the teacher in charge of the girls at school. It was Mrs. Mani. However, the sister of the victim in her evidence did not state anything to the effect that she asked the victim why she was always looked scared or the victim told her about these allegations. The prosecution did not give any explanation why the sister of the victim in her evidence failed to give evidence to confirm the complaint made by the victim, creating a reasonable doubt about the case of the prosecution.

12. Mrs. Mani in her evidence stated that the victim came and informed her that she wanted to talk on the 16th of May 2013. Mrs. Mani then met the victim at the library of the school, where the victim told her about this allegation. She then reported it to the Head Teacher. The Head Teacher then reported the matter to the Social Welfare Office and the Police. The victim in her evidence stated that she complaint to Mrs. Mani twice. Once during the first term of school and then after the school holidays. However, Mrs. Mani in her evidence stated that the victim came and complaint to her about this allegation only on the 16th of May 2013.
13. I now turn onto discuss the effect of this contradictory nature of the evidence of the victim and Mrs. Mani regarding the number of complaints the victim made to Mrs. Mani. The victim admitted in her evidence that she warned the accused twice that she will report to the police or the teachers of her school, despite the threats and continuous hitting by the accused. She did not specify in her evidence when and where she made those warnings to the accused. There is no evidence whether she warned the accused during the first term of school or during the school break. The victim was not consistent in answering the questions posed by the learned counsel for the defence whether she had opportunities to report these alleged incidents to the teachers at school during the first term. While answering, she said that she was thirteen at that time and if anyone scold or hit her, it was not easy for her to go and inform. The learned counsel then elaborated the same question asking the victim that if she had warned the accused that she will report it, why she failed to report it to anyone during the first term of the school. The victim then answered and stated that she reported it to Mrs. Mani during the first term of school. Under such circumstances, it is my opinion that the above discussed contradictory nature of


the evidence of the victim and the evidence of Mrs. Mani to the effect that the victim made two complaints is substantially important. In the absence of any compelling explanation, the said contradictory nature of the evidence has adversely affected the credibility and reliability of the evidence given by the victim.

14. The victim in her evidence stated that the accused started to hit her when she warned him that she will report these alleged incidents. However, she did not specify when and where she was assaulted by the accused. Whether he assaulted her while he was committing these alleged offences on her or some other times. According to her evidence, the accused committed these crimes on her during the first school term, while she was sleeping in the bunk bed with her elder sister. If the accused assaulted her as she claimed, probably her elder sister could have heard such activities. However, the elder sister in her evidence did not state any such incident of assault.
15. Moreover, the prosecution and the defence presented conflicting versions about the setting of the second room, where the victim slept during the school vacation. The victim claims, it is a separate room with separate door. However, the accused claims it is only an extension of the same room where she slept during the school term and has only one door. The elder sister in her evidence did not state anything about this separate room or separate door. The prosecution did not call the investigation officer during the hearing. If the investigation officer called to give evidence, he or she would have able to present an independent evidence about the actual setting of the said room. Unfortunately, the prosecution chose not to call the investigation officer.

16. I observed the manner and the demeanor of the victim when she gave evidence. She was evasive and not consistent in her answers when she was cross examined by the learned counsel for the defence about the opportunities she had to raise alarm to her sister/ or sisters who were sleeping close to her.
17. In view of the above discuss reasons, there is a reasonable doubt about the credibility and reliability of the evidence given by the victim. Therefore, I do not accept the evidence given by the victim. Accordingly I hold that the prosecution has failed to prove beyond reasonable doubt that the accused has committed these three offences as charged in the information.
18. In that context, I do not find any cogent reasons to disagree with the majority verdict of not guilty given by the assessors in respect of the first and second count as charged. Furthermore, I find there is a cogent reason for me to disagree with the majority verdict of guilty given by the assessor in respect of the third count as charged.
19. In conclusion, I hold that the accused is not guilty for these three counts as charged in the information. Accordingly I acquit the accused from the same.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.



At Lautoka
31st of August 2016


R. D. R. Thushara Rajasinghe
Judge

Solicitors : Office of Director of Public Prosecution
Samusamuvodre Sharma Law