

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 66 OF 2012

STATE

-v-

RAVNEEL SHARMA

Counsels : **Mr. S. Babitu for the State**
Mr. R. Kumar for the Accused

Dates of Hearing: **15th June 2015 - 19th June 2015**

Date of Summing up: **22nd June 2015**

Date of Judgment: **24th June 2015**

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

JUDGMENT

1. The Accused was charge with following Counts and was tried before three Assessors.

COUNT 1

Statement of Offence

ABDUCTION OF PERSON UNDER 18 YEARS OF AGE WITH INTENT TO HAVE CARNAL KNOWLEDGE: Contrary to Section 211 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

RAVNEEL SHARMA on the 3rd day of May 2012, at Lautoka in the Western Division, with intent that **MM**, an unmarried girl aged 14 years and 11 months, be unlawfully and carnally known by him, took the said

MM out of the possession and against the will of the mother, NALINI DEVI.

COUNT 2

Statement of Offence

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

Particulars of Offence

RAVNEEL SHARMA on the 4th day of May 2012, at Lautoka in the Western Division, penetrated the vagina of **MM**, with his finger, without her consent.

ALTERNATIVE COUNT 2

Statement of Offence

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

Particulars of Offence

RAVNEEL SHARMA on the 4th day of May 2012, at Lautoka in the Western Division, unlawfully and indecently touched the vagina of **MM**, a girl of 14 years and 11 months.

2. Assessors unanimously found the Accused not guilty of each of these three 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 case was entirely based upon the complainant, MM's evidence.
5. The first Count is Abduction of an unmarried girl under the age of 18. The offence is committed when a girl under the age of eighteen, is 'taken' out of the possession of her parents against their will for the purpose of sexual intercourse.
6. There was no evidence to prove that MM was 'taken' by the Accused on that particular day. No evidence of force either actual or constructive nor was there sufficient evidence to infer that she was promised something, induced, or deceived to go with him. She left home in school uniform

with an extra dress in her bag, changed into it in a public convenience and had just followed the Accused on her own free will either to skip the school and the exam or for any other reason.

7. In her evidence, MM said...

“ I was going to school and was to catch a bus to school. I met Ravneel in town and we went to a Net Café and from there we came back to the bus stand and from there we went to his sister’s placeHe had to do something important and we went there. From sister’s house we went to his house....”

8. Another important element to be proved is that, whether the Accused intended, at the time of the ‘taking’, to have Carnal knowledge, that is sexual intercourse (penetration of her vagina with his penis), with her.
9. Even if Assessors believed that MM’s evidence to be truthful, maximum that had happened on Friday night at Accused’s house was penetration of her vagina with his finger.
10. There was no evidence that he intended to have carnal knowledge of her at the time of taking. According to MM’s evidence, he went out clubbing in the first night with his friends and came past midnight. Only kissing took place and they went to sleep thereafter; she slept on the mattress, he slept on the bed. There was ample opportunity for him to have sexual intercourse. Yet he did not.
11. Ravneel asked, the following night, to have sex and that MM refused. Ravneel’s expressed intention, according to MM’s evidence, was to have sex the second night. There are so many ways of having sex. What did he mean? Did he intend to have sexual intercourse or some other form of sex? He only inserted his finger, not his penis. So, his physical act does not unequivocally suggest that he intended to have carnal knowledge of her even one believes her evidence to be true. No inference can be drawn from her evidence that such an intention was present in Ravneel at the time of alleged taking.
12. Counts 2 and 3 are offences of sexual nature. I directed the Assessors as follows.

...“ there is no rule for you to look for corroboration of victim’s story to bring home an opinion of guilty in a rape case. The case can stand or fall on the testimony of victim depending on how you are going to look at her evidence”...

13. MM’s evidence was inconsistent, improbable and unbelievable and could not be acted upon.
14. It is hardly believable that MM went to school, on an exam day, with her physical education kit in her bag.
15. According to her, she had only one bus that day to go to school and she missed it. It is hardly believable the reason she gave for skipping the school and going with the Accused.
16. It is unbelievable that MM did not have any meal during her two day stay at Accused’s house except for breakfast she had with the Accused on Saturday, after the alleged incident of Rape.
17. It is unbelievable that she did not shout when the Accused inserted his finger into her vagina without her consent, although it was painful.
18. It is unbelievable that she did not complain about the Rape to two women in the Accused’s house or to her own mother or brother when she returned home.
19. It is unbelievable that she did not complain about the Rape to the Police Post she spotted about 200 Meters away from the Accused’s house, on her way back home.
20. She complained and related the story of penetration to Police only on Saturday when her mother and brother asked her to do so. One can consider it to be a belated complaint with enough time to make up a story. There was no reasonable explanation for such delay.
21. MM told that she had to go with the Accused because he missed the school bus. In the medical report (P2) and the Doctor’s evidence thereof with regard to the history, she had told the Doctor that she eloped with his boy- friend.
22. MM told her mother that she secured a part time job in Nadi and staying with a friend, when she was in fact staying with the Accused in his house. She admitted lying to her mother over the phone.

23. MM came up with an explanation in her re-examination and said that she fabricated a story because the Accused was forcing her to do so. This is the first time she gave such an explanation. That is after the lunch- break. In light of her disposition and conduct, it was evident that she was lying.
24. MM admitted demanding money and a laptop from the Accused in order to withdraw the case. She even came to the DPP's office and made an attempt to withdraw the case. When she realized that she could not do so, she made up her mind and decided to go ahead with the case. She also admitted that her father also approached the Accused when he was in remand and demanded money from the Accused to withdraw the case. Although sequence of those events happened after the alleged incident of Rape, one can conclude that MM possessed any other scheme or motive than that of telling the truth to this Court.
25. Ravneel went clubbing and to play soccer leaving MM behind in his house. If a man really had a desire for sex, he would not have left the girl he intended to take in his house alone and gone clubbing with his friends and come back mid night only to go to bed, after kissing.
26. In evidence-in-chief, MM said that it is Ravneel who took off her clothes. In her cross examination she said that Ravneel made her to take it off. I reproduce the exact words she uttered.

In Evidence-in-Chief she said..

He took off my clothes.

In cross examination she said..

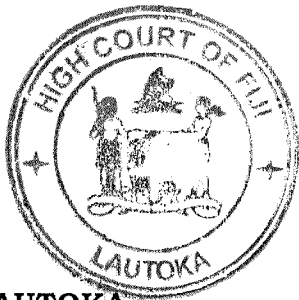
Q. You took off your jeans?

A. He made me take it off.

MM's evidence is contradictory *per-se* and I consider this contradiction is material so as to impeach her credibility.

27. I watched her demeanour when she was giving evidence in Court. Sometimes she was evasive. She felt uncomfortable when she was confronted with some questions though she was smart right through.
28. Complainant lacked credibility on many matters. I cannot be sure that her evidence of Rape she described in her evidence can be true.

29. I am convinced that the Assessors were justified in coming to an opinion of not guilty to each of the Counts. Their opinion was not perverse. It is open for them to reach such a conclusion on the evidence led in the trial.
30. I am therefore of the view that there is no proof of the Counts beyond reasonable doubt. I accept the opinions of the Assessors and the Accused is acquitted and discharged on each Count.
31. That is the judgment of this Court.




Aruna Aluthge
JUDGE

AT LAUTOKA
On 24th June 2015

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