

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 91 OF 2013

STATE

-v-

AJIT SINGH

Counsel: Mr. A. Datt for the State  
Ms. J. Lagi for Accused

Date of summing Up: 1<sup>st</sup> April, 2016

Date of Judgment 7<sup>th</sup> April, 2016

*(Name of the Complainant is suppressed. She is referred to as SP)*

**JUDGMENT**

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

**FIRST COUNT**

**[REPRESENTATIVE COUNT]**

**Statement of Offence**

**ABDUCTION OF A YOUNG PERSON UNDER 18 YEARS OF AGE WITH  
TEND TO HAVE CARNAL KNOWLEDGE:** Contrary to section 211 of the Crimes  
decree No.44 of 2009 and section 70(3) of the Criminal Procedure Decree No. 43 of  
2009.

### **Particulars of Offence**

**AJIT SINGH** between the 1<sup>st</sup> day of November 2011 and the 31<sup>st</sup> day of May 2012 at Ba, in the Western division, with intent that **SP**, being unmarried and being under the age of 18 years, be unlawfully and carnally known by **AJIT SINGH**, took the said **SP** out of the possession and against the will of her aunty, **PRABHA WATI** on more than one occasion.

### **SECOND COUNT**

#### **[REPRESENTATIVE COUNT]**

#### **Statement of Offence**

**RAPE**: Contrary TO SECTION 207 (1) AND (2) (a) of the Crimes Decree NO. 44 of 2009 and section 70(3) of the Criminal Procedure Decree No. 43 of 2009.

### **Particulars of Offence**

**AJIT SINGH** between the 1<sup>st</sup> day of November 2011 and the 31<sup>st</sup> day of May 2012 at Ba, in the Western Division, penetrated the vagina of **SP** with his penis without her consent on more than one occasion.

### **THIRD COUNT**

#### **Statement of office**

**RAPE**: Contrary TO SECTION 207 (1) AND (2) (a) of the Crimes Decree NO. 44 of 2009

### **Particulars of Offence**

**AJIT SINGH**, on the 17<sup>th</sup> day of April 2013 at Ba, in the Western Division, penetrated the vagina of **SP** with this penis without her consent.

### **FOURTH COUNT**

#### **Statement of Offence**

**COMMON ASSAULT**: Contrary to section 274 of the Crimes Decree No. 44 of 2009

### Particulars of Offence

**AJIT SINGH** on the 16<sup>th</sup> day of April 2013, at Moto, Ba in the Western division unlawfully assaulted **SP**.

- [2] Assessors unanimously found the Accused guilty of first three counts and found him not guilty of the fourth count.
- [3] I direct myself in accordance with my own Summing Up and review the evidence led in the trial. I pronounce my judgment as follows.
- [4] There is no issue in this case with regard to the identity of the Accused. Accused admitted that he had sexual intercourse with the Complainant. Only issue so far as the Rape charges are concerned is whether sexual intercourse, on each occasion, took place with Complainant's consent.
- [5] Prosecution says that the Complainant was an underage girl (under 18) and accused took her out of the possession of her father and guardian against their will, and had sexual intercourse with her without her consent. Defence took up the position that accused believed that Complainant was 21 years old and that sexual intercourse took place with her consent.
- [6] The Prosecution based its case substantially on the evidence of the Complainant and the cautioned interview.
- [7] Complainant's evidence is consistent and probable in the circumstances of the case. I am satisfied that the evidence she gave is truthful and believable. There is no rule for me to look for corroboration of her evidence. However, I considered whether there are items of evidence to support her evidence.
- [8] Prosecution discharged its burden and proved each element of each count in the Amended Information beyond reasonable doubt.
- [9] Complainant did not complain any of the incidents to her father, her aunt Prabha Wati, her best friend, police or anyone until the accused was arrested by police nearly two years after the first alleged incident. Contention of the Defence is that she did not complain because she had nothing to complain and everything happened with her consent. It has also been said on behalf of the Accused that the fact that Complainant

did not report what had happened to her as soon as possible makes it less likely that the complaint she eventually made was true.

- [10] Failure on her part to complain soon after the incidents is not necessarily consistent with consensual sexual intercourse. It is only a matter of evaluating consistency and credibility of her evidence. I am satisfied that she had given an acceptable and legitimate explanation for not complaining at the first available opportunity.
- [11] Complainant's explanation was that accused and Vikash kept on threatening and intimidating her, generating in her a fear psychosis that they will harm her family, and that they tell the principal and her father that she slept with him. She was a child of fifteen years old when the first alleged incident occurred. She lived with her aunt and father who was sick. After the death of her father, she lived with her aunt, Prabha Wati. In light of the direction I gave with regard to late complaints by rape victims, her explanation is probable in all the circumstances of this case.
- [12] It would be wrong to assume that every person who has been the victim of a sexual assault will report it as soon as possible. Victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others would react with shame, or fear or shock or confusion, do not complain or go to Police or any other authority for some time.
- [13] Complainant was telling a story on the same lines without variations and contradictions. She was not shown to have given a different version elsewhere. She described the conditions under which she had to give the statement to police. Her failure to mention some of the facts to police did not affect the credibility of her evidence.
- [14] Accused said that he was tricked by the Complainant and her aunt. According to his version, Complainant made up this story to escape from embarrassment at exposure of her having an affair with an old man. Prabha Wati wanted to trick him because he did not give in to her prurient demands. Version of the Defence was not consistent or probable. Accused was in his early twenties and not an old man. He did not tell police anything about Prabha Wati wanting to be with him. It was not put to Prabha Wati, while giving evidence, that she wanted Accused to apply balm on her thighs. Complainant was in school and her aunt was home when Accused was arrested by

policë. They had no time to make up a case against the Accused. Complainant or her aunt was not shown to having any motive to make up a case against the Accused.

- [15] I watched Complainant giving evidence in court. She was straightforward and not evasive. Her demeanor was consistent with her honesty.
- [16] Accused denied, in Court, all the allegations against him. According to him, Complainant was his girlfriend who was excited about sexual experience with him. Assessors rejected his version. Accused did not tell the van driver, Ram Zam, who drove him six times to Moto that he was visiting her girlfriend. Instead, Accused told Ram Zam that he was visiting his family in Moto. Accused made sure that he got off from the van at the junction and walked to her house. Accused did not explain why he kept his visit to 'his family' a secret. Accused's version is inconsistent, implausible and self serving.
- [17] Accused, in his cautioned interview statement admitted that he knew, when he accompanied Complainant to the hotel to have sexual intercourse, that she was an underage girl. He also admitted that he did not inform her father or aunt and that he intimidated the Complainant. Giving evidence in Court, accused took two different stands with regard to those admissions. He said on one hand that he admitted allegations because he was assaulted, threatened and intimidated by police officers. On the other hand, he said some answers had been fabricated by police officers. I reviewed my own finding on *voir dire* proceedings in light of evidence led in trial proper. I am satisfied that accused made a truthful statement to police.
- [18] Allegation of police fabrication of the cautioned interview is not tenable and believable. Accused admitted having signed the cautioned interview after it was read back to him in Hindi. In his evidence, he owned most of the recorded answers and admitted that some of them were even favorable to his defence. He also admitted that the charge statement in which he denied the allegation was recorded properly and fairly. If the police wanted to fabricate an allegation against the accused, they could have done so taking all the precautions to establish their position.
- [19] I watched Accused giving evidence in court. He was evasive and not consistent in his evidence. His version failed to establish a reasonable doubt in the prosecution case.

- [20] Prosecution proved each element of each charge beyond reasonable doubt. Accused, in evidence, admitted that he went to the Ba Hotel twice with the Complainant and had sexual intercourse with her. He also admitted, in the cautioned interview, having sexual intercourse with the Complainant at her place in Moto. I am satisfied the the Complainant was intimidated and her consent was not freely and voluntarily given on each occasion.
- [21] There is no dispute that, after the demise of complainant's father, Prabha Wati became the legal guardian of the Complainant. Accused knew that Complainant was in the care and custody of her father and aunt. He did not inform her father or aunt that he was accompanying her to a hotel. It can be inferred that accused acted against the will of her father and aunt.
- [22] According to the birth certificate, Complainant was born on 14<sup>th</sup> September, 1995. She was under the age of 18 years during the period mentioned in the information. She was compelled to leave her home by coercive tactics used by the accused. Accused used those tactics with the intention of having carnal knowledge of her. The evidence that Accused went to a hotel with the Complainant to have sexual intercourse without consulting her father or aunt is sufficient to find that there was a "substantial interference" with the possessory relationship of parent/ guardian and child.
- [23] Accused failed to establish his defence advanced against the Abduction charge. He said he believed the words of Complainant and was under the impression that she was 21 when they first met. Assessors disbelieved the Accused's evidence. I concur with their finding that was available in evidence.
- [24] According to the Accused's own version he had doubts about Complainant's words. That's why he kept on asking her age seven times. Accused said that when he was at her place in Moto, she went to school. He knew she was still schooling. He told police in the cautioned interview that he knew she was only 15 when they first met at the Ba Hotel. His version at the cautioned interview corroborated the Complainant's evidence. She said that Accused told her, when he called on phone, that he knew that she was schooling at AD Patel. I am satisfied that Accused had no reasonable cause to believe that she was above the age of 18. He did in fact believe that the Complainant was of or under the age of eighteen years.

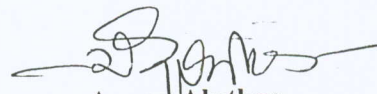
[25] Assessors, having believed the Prosecution evidence, found the accused not guilty of Common Assault charge. I am unable to agree. Complainant said that, when the Accused entered her house in April 2013, he covered her face with his hands, slapped on her face and stomach, and punched her. That evidence is sufficient to find the accused guilty of Common Assault.

[26] I find that it is open for the Assessors to reach the opinion of guilty for the first count of Abduction, second and third counts of Rape. I reject the opinion they expressed in respect of the fourth count of Common Assault. Prosecution proved all the charges beyond reasonable doubt. I find the Accused guilty on all the Counts as charged and convict him accordingly.

[27] That is the judgment of this Court.



At Lautoka  
07<sup>th</sup> April, 2016

  
Aruna Aluthge  
Judge

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