

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 144 OF 2013

STATE

-v-

PRADEEP KUMAR

Counsel : Mr. J. Niudamu for the State

Mr. W. Nainima for Accused

Dates of Trial : 11th, 12th July 2016

Date of Summing Up : 13th July, 2016

Date of Judgment: 15th July, 2016

JUDGMENT

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

COUNT 1

Statement of Offence

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

Particulars of Offence

PRADEEP KUMAR between the 1st day of March 2013 to the 31st day of March 2013 at Rakiraki in the Western Division, penetrated the vagina of POONAM SANDHYA LATA with his penis, without the consent of the said POONAM SANDHYA LATA.

COUNT 2

Statement of Offence

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

Particulars of Offence

PRADEEP KUMAR on the 26th day of May 2013 at Rakiraki in the Western Division, penetrated the vagina of POONAM SANDHYA LATA with his penis, without the consent of the said POONAM SANDHYA LATA.

COUNT 3

Statement of Offence

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

Particulars of Offence

PRADEEP KUMAR on the 26th day of May 2013 at Rakiraki in the Western Division, on an occasion other than referred to in Count 2 and Count 4 of this Information, penetrated the vagina of POONAM SANDHYA LATA with his penis, without the consent of the said POONAM SANDHYA LATA.

COUNT 4

Statement of Offence

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

Particulars of Offence

PRADEEP KUMAR on the 26th day of May 2013 at Rakiraki in the Western Division, on an occasion other than referred to in Count 2 and Count 3 of this Information, penetrated the vagina of POONAM SANDHYA LATA with his penis, without the consent of the said POONAM SANDHYA LATA.

2. Assessors unanimously found the accused guilty on all the counts.
3. In this case, identity of the accused is not disputed. Prosecution says that accused penetrated Complainant's vagina on four occasions without her consent. First incident is alleged to have occurred between 1st March 2013 and 31st March, 2103 and the 2nd, 3rd and 4th incidents on the 26th May, 2013. Accused denies the allegation. He says that allegation against him was made up by the Complainant and her mother Shereen Lata.
4. Prosecution called the Complainant, her mother Shereen Lata and Doctor Alumita to prove the charges and based its case substantially on the evidence of the Complainant. It also relies on medical evidence and recent complaint evidence.
5. I am satisfied that the evidence Complainant gave is truthful and believable. I proceed to give reasons in coming to my conclusion as follows.
6. Incidents alleged in the 2nd to 4th counts happened on the 26th of May, 2016. Complainant informed her mother and thereafter made a complaint to police on the 27th of May, 2013. She had told her mother and police that she was raped by the accused.
7. There is no dispute that Complainant had made a complaint to police on the 27th May 2013. Defence Counsel, however, highlighted certain inconsistencies in her previous statement to police with her evidence in Court. I am of the view that alleged contradictions or omissions are not material enough so as to discredit her evidence.
8. Complainant's mother Shereen Lata gave evidence and confirmed that she received the information from the Complainant on the 27th May, 2013. At the time of the complaint, Complainant was crying and was in a distress condition. Credibility of the Shereen Lata's evidence was not successfully challenged. The new evidence adduced by the accused and his wife during the course of defence case with regard to the so called land dispute was never put to Shereen Lata when she was in the witness box. According to accused's wife's evidence, the alleged ejection occurred in 2006. I am unable to believe such an

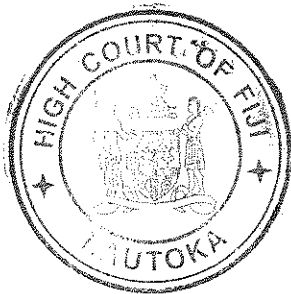
old dispute prompted Shereen Lata to conspire or fabricate a case against the accused after so many years.

9. Recent complainant evidence and distress evidence strengthened the consistency of the version of Prosecution.
10. Alleged first rape incident took place in March, 2013. Complainant did not inform the incident to anybody until she informed her mother and police on the 27th May, 2013. Contention of the Defence is that she did not report what had happened to her as soon as possible makes it less likely that the complaint she eventually made was true.
11. I am unable to agree with the contention of the Defence. It appears that Complainant, in the circumstances of this case, had ample reasons not to make a complaint to anybody. She was in such a vulnerable state in that:
 - a. She was threatened by the accused and a strong warning was in place.
 - b. She lived under the accused's roof and had to depend on accused and his family for everything.
 - c. The DVRO obtained at the instigation of the accused and his wife effectively prevented her from talking to her mother.
 - d. She had nowhere to go. The DVRO prevented her from going to her mother. (Since there was no other option, after a series of rape assaults, she finally decided to go to her mother as the last resort).
 - e. She did not have a phone. (This was confirmed by the accused himself) Her brother Sumit lived far away in Vomo Island and her communication ability with her brother was entirely dependent on the accused. Accused watched her whilst she was on the phone.
 - f. House she lived is the furthest point in the jungle.
 - g. The letter she addressed to the Magistrate effectively estopped her from saying that accused is a rapist. (This letter had been obtained by the accused forcibly after the March incident. In that, she had said that accused is innocent).

12. Doctor's medical finding based on her examination conducted on the Complainant soon after the incident is consistent with a forceful sexual intercourse.
13. Complainant's explanation for her failure to scream or yell is probable and believable. Accused had threatened her not to shout. According to her evidence, no one was home during any of the incidents. During the March incident, accused's youngest daughter had been present in the house, but she was asleep in another room. It is impossible to predict Complainant's reaction to a rape incident. Victims of rape react differently and there is no classic response to unwelcome sexual intercourse.
14. I watched Complainant giving evidence in court. She was straightforward and not evasive. Her conducted in Court is consistent with her honesty.
15. Version of the defence is inconsistent and implausible. It failed to create any doubt in the Prosecution case.
16. Accused was trying to save his own skin and made a desperate attempt to show that he is innocent. His version that Complainant and her mother had conspired against him and that they fabricated this case was not appealing to the assessors and to me.
17. His evidence contradicted on material points with his wife's evidence.
18. After the March incident, he had obtained a letter applying pressure on the Complainant and kept it as a 'character certificate' to commit series of rapes on her a few days later. He ultimately gave that letter to his Counsel to be used in his defence.
19. Defence advanced several stories to convince the assessors that Complainant and her mother conspired against the accused and that the allegation is a total fabrication. None of them were appealing to the assessors and to me. Some of them were based entirely on new evidence which was never put, in the course of cross examination, to the prosecution witnesses. (For instance, slapping incident after snatching of the phone; land dispute way back in 2006 with Complainant's mother). Court can't see any motive to make up a case

against the accused who is a close relative and guardian of her. Defence failed to maintain the consistency of its version.

20. The witness called by the Defence is the wife of the accused. She is not an independent witness. She contradicted his husband's evidence in material points. For instance, she said that she was not home on the 26th May 2013, the day of the second incidents whereas her husband said she was home attending the neighbour's wedding. Her evidence is also inconsistent with her previous statement to police.
21. I watched accused and witness called on his behalf giving evidence in court. They were not straightforward.
22. I reject the version of the Defence. Prosecution discharged its burden and proved each element of the counts beyond reasonable doubt.
23. I accept the unanimous opinion of assessors which was available in evidence led in trial. I find the accused guilty on all four counts of Rape as charged and convict him accordingly.
24. That is the judgment of this Court.



Aruna Aluthge
Judge

At Lautoka
15th July, 2016

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