

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 151 of 2014**

**STATE**

**V**

**ABDUL MANAN**

**Counsel** : Ms. L. Latu for the State.  
: Mr. M. Raratabu for the Accused.

**Dates of Hearing** : 5, 6, 7 June, 2017  
**Closing Speeches** : 8 June, 2017  
**Date of Summing Up** : 12 June, 2017  
**Date of Judgment** : 13 June, 2017

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**JUDGMENT**

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[1] The Director of Public Prosecutions charged the accused by filing the following information:

**FIRST COUNT**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

*Particulars of Offence*

**ABDUL MANAN**, on the 18<sup>th</sup> day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

## **SECOND COUNT**

### *Statement of Offence*

**RAPE:** Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

### *Particulars of Offence*

**ABDUL MANAN**, on the 20<sup>th</sup> day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

## **THIRD COUNT**

### *Statement of Offence*

**RAPE:** Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

### *Particulars of Offence*

**ABDUL MANAN**, on the 22<sup>nd</sup> day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

## **FOURTH COUNT**

### *Statement of Offence*

**RAPE:** Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009

### *Particulars of Offence*

**ABDUL MANAN**, on the 27<sup>th</sup> day of October 2014 at Sarava, Ba in the Western Division, had carnal knowledge of **FARIDA BEGUM**, without her consent.

- [2] The three assessors had returned with a mixed opinion the majority of the assessors (two assessors) returned an opinion that the accused was not guilty on all counts of rape and the remaining assessor's opinion was that the accused was guilty on all counts of rape.
- [3] I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.

- [4] The prosecution called four witnesses while the accused opted to remain silent and not call any witnesses.
- [5] The complainant gave evidence that on four occasions that is on 18 October, 2014, 20 October, 2014, 22 October, 2014 and 27 October, 2014 the accused penetrated the vagina of the complainant with his penis without her consent.
- [6] The complainant informed the court of four occasions the accused had forcefully taken her into his bedroom, removed her clothes and after touching all over her body, sucking her breast, licking her vagina, forcefully inserted his penis into her vagina. On all instances the accused after having sexual intercourse with the complainant ejaculated inside her.
- [7] In respect of the first three incidents the complainant did not complain to anyone of what the accused had done to her since she was threatened by the accused that if she tells anyone he will kill her. After the last incident on 27 October, 2014 the complainant after waking her youngest daughter ran from the house of the accused to her aunt's house. At her aunt's house the complainant told everything to her aunt about what the accused had been doing to her.
- [8] The complainant's aunt Movina called the complainant's husband who was in Rakiraki at the time. The matter was reported by the complainant's husband at the Rakiraki Police Station.
- [9] The second witness was Dr. Anaseini Tabua, who had examined the complainant on 27 October, 2014.

- [10] The Professional Opinion of the Doctor was:  
*“No sign of forceful entry. However, cervix looked bruised which may suggest recent contact. Also noted whitish fluid at adnexa which is possibly semen (specimen taken).”*
- [11] The Doctor further informed the court that not every woman forcefully penetrated with a penis will show injuries. The bruised cervix was suggestive of recent contact and sometimes deep penetration which did not rule out that the patient was raped. The Doctor also stated that her findings were consistent with the history given.
- [12] The third witness for the prosecution Movina Khan informed the court that on 27 October, 2014 the complainant came to her house crying, the witness asked her why she was crying the complainant told the witness that her father-in-law had raped her and also on three previous occasions.
- [13] The final witness for the prosecution was Abdul Shahid. On 27 October 2014 he received a call from the complainant through Movina’s phone. The complainant informed him that his father had raped her. He reported the matter at Rakiraki Police Station.
- [14] The accused on the other hand took the position that he did not penetrate the vagina of the complainant as alleged and that she had lied about the allegations because she did not want to live in the farm or live at her in-law’s house.
- [15] I accept the evidence of the complainant as truthful and reliable. The complainant was able to recall what had happened to her on all four occasions. The complainant was forthright in her evidence and was also able to withstand vigorous cross examination.

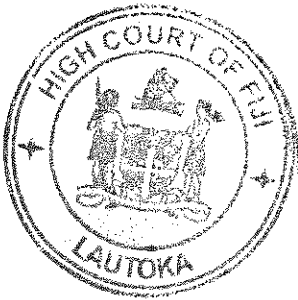
- [16] I have no doubt in my mind that the complainant told the truth in court. Her demeanour was consistent with her honesty.
- [17] The fact that the complainant did not complain to anyone about the first three incidents does not in any way affect the reliability of the complainant's evidence. I accept that the complainant was threatened by the accused to the extent that he will kill her if she informed anyone about what the accused had done to her.
- [18] During the physical examination of the complainant the Doctor had extracted a specimen from the cervix of the complainant which was handed over to the Police Officer accompanying the complainant for forensic testing to confirm whether it was semen or any other liquid. The fact that the analysis of this specimen was not adduced as evidence by the prosecution does not cast any doubt on the prosecution case.
- [19] I also accept the evidence of Dr. Tabua that the bruised cervix of the complainant suggested recent contact and that her findings were consistent with the history narrated to her by the complainant.
- [20] The evidence of Movina Khan is also reliable and I accept her evidence as truthful she had observed the complainant on 27 October, 2014 who was crying. The complainant went to Movina's house and informed her that the accused had raped her on that day and also on three previous occasions.
- [21] The evidence of Abdul Shahid is also truthful and reliable that he reported the matter to Rakiraki Police Station as soon as he was informed that the complainant had been raped by his father.

[22] I am satisfied beyond reasonable doubt that the accused on 18<sup>th</sup> day of October, 2014, 20<sup>th</sup> day of October, 2014, 22<sup>nd</sup> day of October, 2014 and 27<sup>th</sup> October, 2014 penetrated the vagina of the complainant with his penis without her consent.

[23] I also accept that the accused knew or believed the complainant was not consenting on all the four occasions or didn't care if she was not consenting at the time.

[24] I agree with the opinion of the minority assessor and in view of the above I find the accused guilty as charged for all four counts of rape and I convict him accordingly.

[25] This is the Judgment of the Court.



**Sunil Sharma**

**Judge**

**At Lautoka**

13 June, 2017

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs Iqbal Khan & Associates for the Accused.**