

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 163 OF 2013**

STATE

-v-

VINIT VIKASH CHAND

Counsel : Mr. Seruvatu with Ms. Kiran for State  
Ms. P. Chand with Ms. Singh for the Accused  
Date of Summing Up : 26<sup>th</sup> September, 2017  
Date of Judgment : 27<sup>th</sup> September, 2107

(Name of the Complainant is suppressed. He is referred to as R)

**JUDGMENT**

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

**FIRST COUNT**

*Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

VINIT VIKASH CHAND on the 08th of July, 2013 at Nadi in the Western Division, inserted his penis into the mouth of R, an 8 year old boy.

**SECOND COUNT**

*Statement of Offence*

ATTEMPT TO COMMIT RAPE: Contrary to Section 208 of the Crimes Decree 44 of 2009.

*Particulars of Offence*

VINIT VIKASH CHAND on the 08th of July, 2013 at Nadi in the Western Division, attempted to insert his penis into the anus of R, an 8 year old boy.

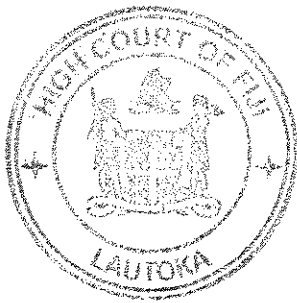
2. Assessors unanimously found the Accused guilty on both counts as charged.
3. I direct myself in accordance with my own summing up and review evidence led in the trial.
4. Having concurred with the opinion of Assessors, I pronounce my judgment as follows.
5. There is no dispute as to the identity of the Accused. It is agreed that Accused is Complainant's cousin. There is also no dispute that the Complainant was eight years old at the time of the incident. Therefore, the consent is not an issue in this case.
6. Prosecution called four civilian witnesses and two police witnesses. They based their case substantially on the evidence of the Complainant and the confessions made to police by Accused. Recent complaint evidence was also led to prove consistency of child Complainant's evidence.
7. I am satisfied that the evidence Complainant gave is truthful and believable. Evidence Accused gave is self-serving and unreliable. It did not create any doubt in the version of the Prosecution case.

8. Complainant maintained his consistency. He had promptly complained to his uncle Ami Chand, his mother and Headmaster. Although he was scared of her mother because he had come home late in that evening, I do not believe that a child of his age is mature enough to fabricate such a serious allegation of sexual nature against his cousin so quickly.
9. According to witness Ami Chand's evidence, Complainant had told him soon after the alleged incident that Vinit dragged him to a sugar cane field and made Complainant suck his penis and then Vinit inserted his penis into Complainant's anus. There is a slight discrepancy between Ami Chand's evidence and that of Complainant's because Complainant did not tell in Court that Vinit managed to insert his penis into his anus. Complainant did not mention about a sugar cane field also. However, these discrepancies cannot be considered as contradictions that would affect or impeach the credibility of the child witness. Furthermore, evidence of Complainant's mother and Headmaster in this regard is consistent with evidence of Complainant.
10. Upon receiving the complaint from her son, Jyotika Prasad had not promptly reported the matter either to police or Headmaster. She has given an acceptable explanation to Court for her failure. She did not have a mobile telephone and could not find one in the neighborhood to inform the police. Her husband was not home because he had gone to the camp. She was in a difficult situation to leave her new born baby home. Therefore, he had asked Complainant to complain to the Headmaster. Her behavior is not unacceptable.
11. Complainant had gone to the Headmaster and voluntarily relayed the incident at the first available opportunity. Headmaster had not reported the incident promptly to the relevant authority under the Child Welfare Decree. He gave reasons for his late reporting. As a person who had received a complaint of such nature for the first time, he took time to study the course of action that was available to him to deal with the situation. Before a report being lodged with the relevant authority, he visited Complainant's mother not because he had any doubt about Complainant's story, but he thought it fit to inform child's mother first.

12. I watched demeanor of the Complainant who was a child of 12 years old at the time of giving evidence. He was quite straightforward and gave evidence with confidence. I am certain he told the truth to this Court.
13. Accused had confessed to police. I am satisfied that those confessions are truthful statements of Accused voluntary made. Accused's evidence that he was brutally assaulted during transportation and at the police station is unbelievable.
14. If he was punched, kicked with safety boots and poked with iron nails, he would have received severe injuries. There is no evidence that he had received such injuries. Accused had never complained to the Magistrate or police about assaults or made any request for a medical examination. Although he said he had complained to his father at the police station itself he contradicted his own evidence when he said that he made that complaint only when he was produced in the Magistrates court. He agreed that he lied to this Court.
15. Accused admitted that his father was present at the police station on the first day of the interview and his mother and family members visited him on the second day. If Accused was assaulted to such a magnitude, police officers would never have allowed his family members to see and talk to him.
16. There is no evidence of fabrication of the interview by police. First part of Accused's caution statement regarding his involvement with Complainant is consistent with his own evidence and also with Complainant's evidence. Police would not have known Accused's story about going to a school and fixing a pipe unless it was told by the Accused. I am satisfied that answers written in the interview had been given by the Accused.
17. Accused's evidence is not credible. He admitted that he lied to police and also to Court under oath.
18. Complainant could not recall any incident of Accused fixing a pipe and going to a school while selling dhanias. He denied taking Accused's bicycle and that he was slapped. Accused did not allow Complainant to sit on his bicycle because the brake was not in a good condition. However, he said that he rode the bicycle really fast to catch the Complainant. Although Accused said that Complainant's uncle came to hit him with a stick, this version was never put to Ami Chand

when he was in the witness box. The story of the Accused is not consistent and believable. His version is self-serving. I reject the evidence of Defence. Defence's evidence failed to damage the version of the Prosecution.

19. There is clear evidence of penetrating the mouth of Complainant with Accused's penis. Accused had spat in Complainant's anus before forcing Complainant to sit on his erected penis. He had to give up this exercise due to Complainant's reluctance. Accused has manifested his intention to rape. It was not an act of mere preparation.
20. Prosecution proved both charges beyond reasonable doubt. I agree with the unanimous opinion of assessors.
21. I find the Accused guilty on each count. Accused is convicted on each count accordingly.
22. That is the Judgment of this Court.



Aruna Aluthge

Judge

**AT LAUTOKA**

**27<sup>th</sup> September, 2017**

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