

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 202 OF 2016S

STATE

vs

GOVIND SAMI RAJU

Counsels : Ms. K. Semisi for State
Ms. S. Vaniqi for Accused
Hearings : 29, 30, 31 May, 1 and 4 June, 2018
Summing Up : 5 June, 2018
Judgment : 6 June, 2018

JUDGMENT

1. On 29 May 2018, before three assessors and myself, the accused, in the presence of his counsel, pleaded not guilty to the following counts, in the following information:

First Count

Statement of Offence

RAPE: contrary to Section 207(1) and (2)(a) and (3) of the Crimes Act of 2009.

Particulars of Offence

GOVIND SAMI RAJU between the 1st day of May 2016 and the 31st day of May 2016 at Nasinu in the Central Division had carnal knowledge of R. R. C, an 11 year old girl.

Second Count

Statement of Offence

RAPE: Contrary to Section 207(1) and (2)(a) and (3) of the Crimes Act of 2009.

Particulars of Offence

GOVIND SAMI RAJU between the 1st day of May 2016 and the 31st day of May 2016 at Nasinu in the Central Division, on an occasion other than that mentioned in Count 1, had carnal knowledge of R. R. C, an 11 year old girl.

Third Count

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210(1)(a) of the Crimes Act of 2009.

Particulars of Offence

GOVIND SAMI RAJU on the 19th day of April 2016 at Nasinu in the Central Division unlawfully and indecently assaulted R. R. C, an 11 year old girl, by kissing her lips.

2. After a five days trial, the three assessors returned with a mixed opinion. Assessor No. 1 found the accused not guilty as charged on all counts. Assessor No. 2 found the accused guilty as charged on counts no. 1 and 3, but not guilty on count no. 2. Assessor No. 3 found the accused guilty as charged on counts no. 1 and 2, but not guilty as charged on count no. 3
3. The sum total of the three assessors' opinion were as follows. On count no. 1, the majority found the accused guilty as charged (i.e. Assessors No. 2 and 3). On count no. 2, the majority found the accused not guilty as charged (i.e. Assessors No. 1 and 2). On count no. 3, the majority found the accused not guilty as charged (i.e. Assessors No. 1 and 3)
4. The assessors' opinions are not binding on the trial judge. However, their opinions are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. The ultimate responsibility in deciding whether or not the accused was guilty as charged, lay with the trial judge, after taking into account the assessors' opinions, the law and the evidence.
5. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I delivered to the assessors yesterday.
6. The majority of the assessors had accepted the prosecution's version of events on count no. 1, that is, Assessor No. 2 and 3. The majority of the assessors had rejected the prosecution's version of events in count no. 2 and 3. Please, refer to paragraph 3 hereof.

7. The assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
8. In my view, the case really comes down to the words of the complainant (PW1) as against the words of the accused (DW1). In other words, it comes down to the words of an 11 year old female complainant, as against the words of an 85 year old man.
9. I have carefully listened to and carefully observed the demeanours of all the prosecution's and defence's witnesses. I have carefully read and considered all the exhibits tendered by the parties. In count no. 1, the complainant (PW1) said, the accused, at the material time, inserted his penis into her vagina. She said, her vagina bled at the time. She said, during the penetration, her vagina was painful. She said, at the time, she was 11 years old. The accused, in his sworn evidence, denied the above. Assessors No. 2 and 3 accepted the complainant's version of events on count no. 1.
10. In count no. 2, the complainant (PW1) repeated what she said in count no. 1. The accused denied the same on oath. Assessors no. 1 and 2 did not accept the complainant's version of events on count no. 2. In count no. 3, the complainant said, the accused indecently kissed her lips at the material time. Assessor no. 1 and 3 did not accept the complainant's version of events.
11. Although in rape cases, there was no need in law to find corroborative evidence to support the complainant's evidence, I have looked to the doctor's evidence to find assistances in reaching my conclusion on the facts. Doctor Annette Naigulevu (PW6) medically examined the complainant on 27 May 2016. On 31 May 2016, the complainant was medically examined by Doctor Brain Fortuno (PW5). Both doctors appear to reach different conclusions. On 27 May 2016, Doctor Naigulevu saw two small tears at PW1's hymenal membrane between 3 to 6 o'clock and there was redness around the area. In her opinion, "the above findings are suggestive of penetration into the vagina with the tear and redness". On 31 May 2016, Doctor Furtuno examined PW1. He saw some redness around PW1's vagina, however he saw no laceration, pus, discharge or bleeding. According to Doctor Fortune, the hymen was intact. Both doctors agree that children complainants have good regenerative ability around the vaginal area. Doctor Naigulevu said, "In some cases, when a penis penetrates the

complainant's vagina, the hymen could still be intact in pre-puberty girls. In this case, PW1 was a pre-puberty girl".

12. Doctor Naigulevu said, "The vagina has a lot of blood vessels. Any tear to it would cause bleeding. If PW1 said it was painful at the time of the alleged incident, it could suggest something was going through the vagina. Doctor Naigulevu continued, "If any injury occurs to the vagina, it has a rapid regenerative ability, and it can appear normal after 48 to 72 hours. If PW1 was examined on 31.5.16, because of its re-generative ability, the vagina could look normal. Even Doctor Fortune said the following, "children have good re-generative ability, especially around the vaginal area. If Doctor Annette noted superficial tears on the hymenal membrane, by the time I examined her, there is a possibility that those tears would have healed and that is because they have good re-generative ability. A superficial laceration is one that is not deep".
13. I have taken onboard what the doctors said above. In my view, the doctors' observations supported the complainant's version of events, as highlighted for count no. 1. I find the complainant's evidence on count no. 1 credible, and I accept the same. I reject the accused's sworn denials on count no. 1. In my view, on count no. 1, the accused's evidence was not credible. On count no. 1, I agree with the majority opinion of the assessors (i.e. Assessor No. 2 and 3) and I find the accused guilty as charged, and I convict him accordingly on that count.
14. On count no. 2 and 3, the majority of the assessors rejected the prosecution's version of events. I have looked at the whole of the evidence. In my view the prosecution's case was not presented properly. It caused me confusion, especially when differentiating the facts for count no. 1 and 2. On count no. 3, PW2's evidence was suspect. I was thrown into a reasonable doubt on the prosecution's case. I agree with the majority opinion of the assessors on count no. 2 and 3, and find the accused not guilty as charged on count no. 2 and 3. I acquit the accused on count no. 2 and 3




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JUDGE

Solicitor for the State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva.
Ms. S. Vaniqi, Barrister and Solicitor, Suva