

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 19 OF 2017

STATE

v

SHANIL KUMAR

Counsel: Ms. R. Uce for State
Ms. K. Vulimainadave with Ms. Manueli for
Defence

Date of Summing Up: 18th June, 2018

Date of Judgment : 19th June, 2018

JUDGMENT

1. The Accused is charged on the following Information and was tried before three assessors.

Statement of Offence

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

Particulars of Offence

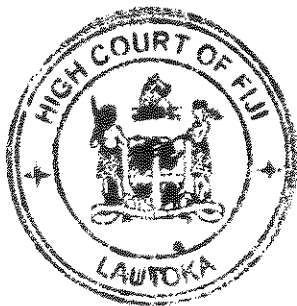
SHANIL KUMAR on the 28th day of January, 2016 at Lautoka in the Western Division, inserted his penis into the vagina of **SHALINI PRITIKA CHARAN**, without her consent.


2. Assessors in their unanimous opinion found the Accused not guilty of rape as charged.
3. I adjourned overnight to deliberate on my Judgment. Having reviewed my own summing up and evidence led in trial, I have decided to adopt the opinion of Assessors. I proceed to give my reasons as follows.
4. Prosecution called two witnesses, the Complainant and her grandmother, and based their case substantially on the evidence of the Complainant.
5. The identity of the Accused was not disputed by the Defence. However, each element of Rape is disputed by the Defence. The Defence case is one of denial.
6. Defence's version is that Accused was in a boyfriend-girlfriend relationship with the Complainant and within that relationship he has had consensual sexual intercourse with the Complainant on a different day in a Motel in Nadi.
7. Complainant denies having had such a relationship with the Accused. However, she admits talking to each other as friends when he used to come to Nani's Restaurant where she worked for a short period. Complainant admits that she had given her grandmother's mobile telephone number which she was using at that time to the Accused. She admits calling the Accused over the phone during night time to arrange a meeting in Lautoka Town. She admits meeting the Accused at 'Chicken Express' in Lautoka even after she had left Nani's Restaurant. She admits having accompanied the Accused to lodge her job application at McDonalds in Lautoka. She admits walking down to Lautoka bus stand with the Accused after the meeting at 'Chicken Express'. She admits

having agreed to go to Nadi Town with the Accused in his car on the day of the alleged incident. All these admissions suggest that the relationship she has had with the Accused is not mere normal friendship but one of romantic.

8. Complainant had gone to the Saweni Beach with the Accused in his car. It was during midday they had gone there. Accused is in the same age group as the Complainant and is not a well- built man. If she was taken there against her will she had ample opportunity to protest, raise alarm or run away. There is no evidence of him using violence force on her. She had not raised any alarm. It is highly unlikely that nobody was there to call for help at that time in the Saweni beach.
9. Complainant did not complain to anybody about a rape incident and implicate the Accused until she was taken to the police station by her grandmother two months after the alleged incident. If he was sacred or ashamed to inform her father she could have informed her grandmother who had come to visit her during the end of March 2016. The alleged incident came to light only when she was taken for a scan by her grandmother. Complainant kept the alleged incident a secret for two months until the nurse who did the scan exposed that she was pregnant. It is highly probable that she made up a story to cover up her unbecoming behavior and resultant unplanned pregnancy.
10. Complainant's evidence is inconsistent with that of her grandmother as to how the alleged rape incident came to light. Complainant also contradicted her own evidence when she said that after the incident both of them came to where they met at the Saweni Junction and then went back and denied having said so.
11. I observed Complainant's demeanor in Court. She was not straightforward. I find the Complainant to be an untrustworthy witness.
12. I bear in mind that no corroboration is required to bring about a conviction in a rape case. However, it is dangerous in this case to act upon Complainant's unsupported evidence. The benefit of doubt must be given to the Accused.

13. I reject the evidence of the Prosecution. Prosecution failed to prove the charge beyond reasonable doubt. Unanimous opinion of Assessors is justified and available in evidence led in trial. I accept the opinion of the assessors.
14. I find the Accused not guilty of Rape.
15. Accused is acquitted and discharged accordingly. That is the Judgment of this Court.




Aruna Aluthge
Judge

AT LAUTOKA

19th June, 2018

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