

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 143 OF 2019**

**STATE**

**V**

**RASIL PRASAD**

**Counsel** : **Ms. S. Shameem for State**  
**Mr. K. Chang with Ms. M. Singh for Defence**

**Dates of Hearing** : **26, 27 August 2019**

**Date of Summing Up** : **28 August 2019**

**Date of Judgment** : **29 August 2019**

### **JUDGMENT**

1. The accused was charged with one count of Abduction of a Young Person under 18 Years of Age with Intent to Have Carnal Knowledge. The Information is as follows:

*Statement of Offence*

**ABDUCTION OF A YOUNG PERSON UNDER 18 YEARS OF AGE WITH INTENT TO HAVE CARNAL KNOWLEDGE:** Contrary to section 211(1) of the Crimes Act 2009.

*Particulars of Offence*

**RASIL PRASAD** on the 1<sup>st</sup> day of April 2019, at Nasinu in the Central Division, with the intent to have carnal knowledge of **ANNIE LANYON** an unmarried girl below the age of 18 years, unlawfully took the said **ANNIE LANYON** out of the possession and against the will of her father **BEN LANYON**.

2. The assessors unanimously found the accused 'not guilty' as charged.
3. I direct myself in accordance with my own Summing Up and review evidence led in the trial. Having concurred with the opinion of assessors, I pronounce my judgment as follows.
4. To find the accused guilty of Abduction of a Young Person under 18 Years of Age with Intent to Have Carnal Knowledge, the Prosecution must prove that:
  - (a). the accused- Rasil Prasad;
  - (b). took or caused the complainant-Annie Lanyon to be taken away out of the possession and against the will of her father;
  - (c). the complainant was unmarried and below the age 18 years at the time of the offence; and
  - (d). the taking away was with the intention to have carnal knowledge of the complainant.

5. The Prosecution called the complainant and her father Ben Lanyon as witnesses. At the close of the Prosecution's case, the accused elected to give evidence under oath.
6. There is no dispute in this case about the identity of the accused. The accused admits that he took the complainant out of her father's possession and that he did not take permission from complainant's father to take her to his house. The accused admits that he paid \$100 in exchange of sexual gratification before the complainant was taken to his house and that he had sexual intercourse with the complainant at his house. Therefore it is open for the assessors to find that the accused took the complainant to his house with intent to have carnal knowledge of the complainant.
7. The complainant said that she was 17 years of age at the time of the alleged offence. The birth certificate tendered in evidence shows that the complainant was under the age of 18 years at the time of the alleged offence. The complainant was still schooling. Therefore it is open for the assessors to find that the complainant was under the age of 18 years and unmarried at the time of the alleged offence.
8. The Defence relies on the statutory defence available to the offence. Section 211 (2) of the Crimes Act provides for the defence in following terms:

*"It shall be a sufficient defence to any charge under this section if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of eighteen years."*

9. It is clear that the Defence has only an evidential burden which requires it to introduce some evidence pointing towards the defence. Once that is done, the Prosecution has to disprove the defence and discharge the overall burden of proof beyond reasonable doubt.

10. In view the evidence introduced by the Defence in support of the said defence, the main issue before the assessors was whether the Prosecution had disproved the defence that the accused had reasonable cause to believe and he did in fact believe that the complainant was of or above the age of eighteen years.
11. The complainant in her evidence said that she informed the accused that she was schooling at Dudley High School and that she was in Form 5. However she admits that she did not disclose her age to the accused. The accused on the other hand denies that he was informed by the complainant that she was schooling at Form 5. He says that the complainant in fact told him that she was above the age of 18. He also said that from her built, talk, appearance and her conduct he believed that she was an adult above the age of 18.
12. The complainant admits that she gave three statements to police. In her second statement given on 21 May 2019, the complainant had confirmed to police that she had initially lied to police in her previous statement. She had also lied to her parents and pretended to be schooling for a week before the alleged incident. Although she said that she was scared of her father that she will be beaten up if she went home, her father Ben Lanyon denied having beaten up her children to discipline them. There are material inconsistencies in her own evidence and also with that of her father. Furthermore the complainant was evasive in her testimony when she was confronted with crucial questions. I observed the demeanour of the complainant carefully. It is open for the assessors to reject the evidence of the complainant.
13. Even if the assessors had accepted the evidence of the complainant that she had informed the accused that she was schooling at Form 5, in the circumstances of this case, it is open for the assessors to conclude that it was reasonable for the accused to believe and he in fact believed that the complainant was of or above the age of eighteen years.

14. The accused had met the complainant close to midnight at a bus halt in Valelevu Junction. When she was questioned by the court, she failed to disclose as to why she was hanging around late at night on the road. She was drunk and smelling of alcohol. She was not dressed in a school uniform. The alleged offence took place recently about 4 months ago and the complainant was only one year short of 18 at the time of the alleged offence. By observing the physique of the complainant, the assessors found her to be adult looking. Being a complete stranger, the accused is justified in believing that the complainant was of or above the age of eighteen years.
15. The evidence led in trial is sufficient to create a reasonable doubt in the version of event of the Prosecution's case. The benefit of that doubt must be given to the accused.
16. I accept the unanimous opinion of the assessors and find the accused not guilty.
17. The accused is acquitted and discharged accordingly.



At Suva

29 August 2019

A handwritten signature in black ink, appearing to read 'Aruna Aluthge'.

**Aruna Aluthge**  
**Judge**

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