

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 81 of 2018

STATE

vs.

MR

Counsel: Ms. S. Swastika for the State
Mr. K. Cheng for Accused

Date of Hearing: 18th, 20th, 23rd and 27th September 2019

Date of Closing Submission: 30th September 2019

Date of Summing Up: 01st October 2019

Date of Judgment: 03rd October 2019

JUDGMENT

1. The name of the accused and the complainant are suppressed.
2. The accused is being charged with one count of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (b) (i) and (2) of the Crimes Act and one count of Abduction of Young Person, contrary to Section 285 of the Crimes Act. The particulars of the offences are that:

Statement of Offence

RAPE: *Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act No. 44 of 2009.*

Particulars of Offence

MR, *on the 25th day of January, 2018, in Lakena, Nausori, in the Central Division, penetrated the vulva of AB, a child under the age of 13 years, with his finger.*

Second Count

Statement of Offence

SEXUAL ASSAULT: *Contrary to Section 210 (1) (b) (i) and (2) of the Crimes Act No. 44 of 2009.*

Particulars of Offence

MR, *on the 25th day of January, 2018, in Lakena, Nausori, in the Central Division, unlawfully and indecently assaulted AB, by bringing his penis into contact with her hand.*

Third Count

Statement of Offence

ABDUCTION OF YOUNG PERSONS: *Contrary to Section 285 of the Crimes Act No. 44 of 2009.*

Particulars of Offence

MR, *on the 25th day of January, 2018, in Lakena, Nausori, in the Central Division, unlawfully took AB, being under the age of 18 years, out of the possession and against the will of her grandmother.*

3. The hearing commenced on 18th September 2019 and concluded on the 27th September 2019. The prosecution presented the evidence of eight witnesses, including the complainant. The accused opted to exercise his right to remain silence, hence, adduced no evidence for the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. I then delivered the summing up.
4. The three assessors in their opinion unanimously found the accused guilty of all three counts.
5. Having carefully taken into consideration the evidence presented by the prosecution, the respective closing addresses of the counsel, the summing up and the opinions of the assessors, I now proceed to pronounce the judgment as follows.
6. The prosecution alleges that the accused had taken the complainant to a location where no one was present in the morning of 25th of January 2018 against the will of her grandmother. He had then forced her to touch his penis and then penetrated into her vagina with his index finger.
7. The prosecution case mainly depends on the correctness of the identification of the accused as the perpetrator by the complainant. According to the complainant, she had been observing the accused over an hour during the course of these events. He was very closed to her when the accused committed these crimes on her. It was a bright morning with no rain. The complainant had then clearly identified the accused at the Identification Parade which was done just a day after the alleged incident. The complainant gave the description of the car that the accused used to abduct her and then later committed the two offences of Rape and Sexual Assault.
8. The accused was arrested in the night of 25th of January 2018 when he was driving the Honda Hybrid Car bearing the registration number JG192.
9. I observed that the complainant was forthright and coherent in giving her evidence.

10. Having taken into consideration the circumstances under which the identification of the accused was made by the complainant and other evidence presented by the prosecution to support the evidence of identification, I find the evidence of identification of the complainant is reliable and credible. Hence, I accept the evidence of the complainant as truthful evidence.
11. In view of the above discussed reasons, I find no cogent reason to disagree with the unanimous opinion of guilty given by the three assessors. Accordingly, I hold that the prosecution has successfully proven the accused guilty of all three counts as charged beyond reasonable doubt.
12. In conclusion, I find the accused guilty of one count of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act, one count of Sexual Assault, contrary to Section 210 (1) (b) (i) and (2) of the Crimes Act and one count of Abduction of Young Person, contrary to Section 285 of the Crimes Act as charged in the information and convict him to the same accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva

03rd October 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.