

**IN THE HIGH COURT OF FIJI  
AT SUVA  
[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. 123 OF 2019**

**STATE**

**V**

**RAVINESH CHAND**

**Counsel:** Ms S Sharma for the State

Mr I Khan for the Accused

**Date of Hearing: 7, 9 – 10, 14 - 15 December 2020**

**Date of Summing Up: 15 December 2020**

**SUMMING UP**

- [1] Ladies and Gentleman Assessors, it is now my duty to sum up the case to you. We have differing roles in this trial. I have to give you directions on the law and you must accept those directions. You are to decide the facts applying those directions and to give me your opinions as to the Accused's guilt or innocence.
- [2] In going through the evidence I may express an opinion. If you do not agree with that opinion, you are free to ignore it and to form another view of that piece of evidence. I may omit some evidence which you think significant. Nonetheless you may give that evidence such weight as you consider appropriate. You are free to form your own opinions.

- [3] At the end of this summing up, and after you have given your individual opinions, the final decision on the facts rests with me. I am not bound to conform to your opinions. However in arriving at my judgment I shall place much reliance upon your opinions.
- [4] The burden of proof rests throughout the trial upon the prosecution. In our system of justice there is a presumption of innocence in favour of an Accused. The prosecution brings the charge against the Accused. Therefore it is for the prosecution to prove the charge against the Accused. Each element of the charge must be proved, but not every fact of the story. This burden never changes, never shifts to the Accused.
- [5] The prosecution must prove its case beyond reasonable doubt. That means that before you express an opinion that the Accused is guilty of the charge you must be satisfied so that you are sure of his guilt beyond reasonable doubt. If you consider him innocent of the charge you must give your opinion that he is not guilty. If you entertain a reasonable doubt of guilt, you must also give your opinion that the Accused is not guilty of the charge.
- [6] You must decide this case upon the evidence presented to you. If a witness was not called you must not speculate the reasons why the witness was not called. You must only consider evidence which were led in the trial. It will be your task to discover which witnesses have given honest and accurate evidence and which may not.
- [7] In this case the complainant gave evidence behind a screen. The giving of evidence in this way is perfectly normal in cases like this. It is designed to enable the witness to feel more at ease when giving evidence. It is not intended to prejudge the evidence which the witness give. The fact that the evidence had been so given must not in any way be considered by you as prejudicial to the Accused.
- [8] After I have completed this summing up, you will be asked to retire to your retiring room to deliberate amongst yourselves so as to arrive at your opinions. Upon your return to court, when you are ready, each one of you will be required to state his or her individual opinions orally on the charges against the Accused, which opinions will be recorded.

Your opinions need not be unanimous. You will not be asked for reasons for your opinions.

- [9] However it will be helpful to you beforehand in arriving at sound and rational opinions if you ask yourselves why you have come to those opinions.
- [10] Those opinions must be based solely upon the evidence. Evidence consists of sworn testimony of the witnesses, what each witness has told the court in the witness box.
- [11] Neither speculation nor theories of one's own constitute evidence. Media coverage, idle talk, or gossip, are similarly not evidence. Put out of your mind when considering your opinions, anything you may have heard about this case outside the courtroom. Focus solely on the evidence which you have seen, heard, or examined in this court.
- [12] This summing up is not evidence either, nor are counsel's opening or closing addresses. Naturally we hope all of these are of assistance to you, but they do not constitute evidence.
- [13] If a witness is asked a question in cross-examination and agrees with what counsel is suggesting, the witness's answer is evidence. If he or she rejects the suggestion, neither the question nor the answer can become evidence for the proposition put.
- [14] In arriving at your opinions, use the common sense you bring to bear in your daily lives, at home and at work. Observe and assess the witnesses' evidence and demeanor together with all of the evidence in the case. You can accept part of a witness's testimony and reject other parts. A witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and be wide of the mark about another.
- [15] If you have formed a moral opinion on the conduct alleged in this case, put that to one side. Consistent with your oath, you should put away both prejudice and sympathy. Approach your assessment of the evidence dispassionately. Bring a cool detachment to your task of examining whether the case against the Accused has been proved before you, proved with evidence led by the prosecution.

[16] I turn now to deal with what the prosecution must prove. The Accused is charged with four counts. You must consider each count separately, when you examine the case in your deliberations. Look at the evidence as it affects each count separately. Your opinions about the charges could differ from one to the other, depending on the view you took on each count and the evidence available on each count.

[17] Count one alleges that the Accused on 21 March 2019 at Luvuluvu Road, Nausori, unlawfully and indecently assaulted the complainant by kissing her lips and sucking her breast. The essential ingredients of the charge on count one are:

1. That the Accused on the said date and place assaulted the complainant,
2. That the assault was unlawful and indecent,
3. That the assault was without the consent of the complainant,
4. That the Accused knew that the complainant was not consenting.

[18] Let me explain these elements in detail.

[19] Firstly, the prosecution must prove beyond reasonable doubt that the Accused by his act assaulted the complainant. An assault is the deliberate and unlawful touching of another person. The slightest touch is sufficient to amount to an assault and it does not have to be a hostile or aggressive act or one that caused the complainant fear or pain. There is no suggestion in the present case that, if the Accused touched the complainant as the prosecution alleged he did, the touching was lawful.

[20] Secondly, the prosecution must prove beyond reasonable doubt that the assault was indecent. The word “indecent” means contrary to the ordinary standards of respectable people in this community. It is for you to determine the standards prevailing in our community when deciding whether the prosecution has satisfied you beyond reasonable doubt that the act alleged (kissing and touching breast) in this case was indecent. For an assault to be indecent it must have a sexual connotation or overtone. If an accused touches the complainant’s body or uses in a way which clearly gives rise to a sexual connotation that is sufficient to establish that the assault was indecent.

[21] In deciding whether the prosecution has proved this essential ingredient of the charge, you should take into consideration all the surrounding circumstances including the Accused's words and/or actions, the respective ages of the Accused and the complainant, any relationship which may have existed between them and the nature of the act relied upon.

[22] Thirdly, the prosecution must prove beyond reasonable doubt that the Accused did the alleged act without the complainant's consent knowing that she was not consenting. Consent involves the conscious and voluntary permission by the complainant to the Accused to touch the complainant's body in the manner that he did. Consent or the absence of consent can be communicated by the words or acts of the complainant.

[23] However, consent is not a defence to a charge of sexual assault if the complainant is under the age of 16 years at time of the alleged assault. In the present case, the age of the complainant at the relevant date is not in dispute. On 21 March 2019, she was 15 years of age. Also there is no suggestion by the Accused that he had reasonable cause to believe and did in fact believe that the complainant was of or above the age of 16 years. The issue of whether the Accused knew that the complainant was not consenting does not arise as the complainant was under the age of 16 years at the relevant time.

[24] In summary, the issues for you to determine on count one are:

1. Whether the Accused without lawful excuse touched the complainant by kissing her lips and sucking her breast? and
2. Whether the acts of kissing and sucking breast of a 15- year girl were contrary to the ordinary standards of respectable people in this community?

[25] If you are satisfied beyond reasonable doubt that the Accused kissed the complainant and sucked her breast and that those acts were contrary to the ordinary standards of respectable people in this community, then you render opinion of guilty of sexual assault. But if you are not so satisfied or if you have reasonable doubt as to the guilt of the Accused you must render opinion of not guilty of sexual assault.

[26] On counts two, three and four the Accused is alleged to have committed three different forms of rape as part of one transaction at Luvuluvu Road, Nausori, on 21 March 2019. Count two alleges penile penetration of the complainant's mouth. Count three alleges digital penetration of the complainant's vagina using finger. Count four alleges sexual intercourse.

[27] The essential ingredients of the charge on count two are:

1. That on the said date and place the Accused penetrated the mouth of the complainant with his penis.
2. That the complainant did not consent to the penetration.
3. That the Accused knew the complainant did not consent.

[28] The essential ingredients of the charge on count three are:

1. That on the said date and place the Accused penetrated the vagina of the complainant with his finger.
2. That the complainant did not consent to the penetration.
3. That the Accused knew the complainant did not consent.

[29] The essential ingredients of the charge on count four are:

1. That on the said date and place the Accused had sexual intercourse with the complainant, that is, he penetrated her vagina with his penis.
2. That the complainant did not consent to the penetration.
3. That the Accused knew the complainant did not consent.

[30] Let me explain each of these ingredients in detail.

[31] Firstly, it must be proved beyond reasonable doubt that the Accused penetrated the mouth of the complainant with his penis as alleged on count two, the vagina of the complainant with his finger as alleged on count three and the vagina of the complainant with his penis

as alleged on count four. The slightest degree of penetration is enough, and it is not necessary to prove that ejaculation took place.

[32] Secondly, the prosecution must prove beyond reasonable doubt that when the Accused did the three alleged acts of penetration, he did so without the complainant's consent. The term consent means consent freely and voluntarily given by the complainant to engage in the physical acts of sexual penetration. Consent can be given verbally, or expressed by actions. Similarly, absence of consent does not have to be in words; it also may be communicated in other ways. Consent obtained after persuasion is still consent. However, the law specifically provides that a person who does not offer actual physical resistance to sexual acts is not, by reason only of that fact, to be regarded as consenting to the sexual acts.

[33] Thirdly, it must be proved that the Accused knew that the complainant did not consent. This is a subjective, and not an objective test. You might ask how, in the absence of an admission by the Accused, the prosecution can prove that the Accused was aware that the complainant did not consent. The prosecution asks you to infer from other facts which it has set out to prove, that the Accused must have known and that he did indeed know.

[34] All three elements of rape are in dispute. On each count of rape, the questions for you are:

Whether the Accused penetrated the complainant's mouth with his penis (count two), vagina with his finger (count three) and vagina with his penis (count four)?

Whether the penetration was without the consent of the complainant on each of the alleged occasions?

Whether the Accused knew that the complainant did not consent to the sexual penetration of her mouth and vagina?

[35] I turn now to summarize the evidence. In doing this it would be tedious and impractical for me to go through the evidence in detail and repeat every submission made by counsel. I will summarize the salient features. If I do not mention a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should

consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

[36] Both sides have agreed to certain facts. The Agreed Facts are to be taken as true when you consider the evidence and the charges. The Agreed Facts are:

1. That the complainant in this matter is Shinal Swastika Chand.
2. That the accused in this matter is Ravinesh Chand.
3. That the complainant was 15 years old at the time of the alleged incident.
4. That Ravinesh Chand is a pastor of the Hindi Christian Fellowship Four Square Church located at Nadali Nausori.
5. That the complainant attended Hindi Christian Fellowship Four Square Church.
6. That Ravinesh Chand knew the complainant.
7. That on the 21<sup>st</sup> day of March 2019 Ravinesh Chand was driving vehicle registration LT 6451.
8. That Ravinesh Chand picked the complainant up from her residence in Bau Road on the 21<sup>st</sup> day of March 2019.

The following document is tendered by consent:

- 1) Birth certificate of Shinal Swastika Chand.

[37] The prosecution called 6 witnesses.

[38] In relating to the alleged incidents the complainant told the court that in the afternoon of 21 March 2019 the Accused picked her up from her home to buy a cake for her birthday celebration. She said that the Accused spoke to her mother on the phone regarding the arrangements for the celebration. Her mother allowed her to accompany the Accused to buy cake because he was their pastor and they had known him for about a year. She said that the Accused drove a taxi. She sat on the front passenger seat. He drove past the airport and parked his vehicle at an isolated spot. He told her that he was in love with her. She said she was shocked. She didn't say anything. He pulled her towards him and kissed her on her lips for a few seconds. He took her hand and placed on his penis for her to hold it. He opened the zip of her dress and pulled down the left sleeve. He sucked her



breast. After that he had a call which he answered. The complainant said that she was in a state of shock. The Accused was known as a trusted person.

[39] The complainant said that after the phone call the Accused held his penis and forced her mouth on his penis. She said that he penetrated her mouth with his penis. She said that she started gagging and felt like vomiting.

[40] The complainant said that the Accused pulled her seat back and came on top of her. She said that he pulled her tights off and penetrated her vagina with his finger and then with his penis. She said she felt pain when he penetrated her vagina. She said that she could not scream because his weight was on her chest. She said that his finger went inside her vagina. She said that he penetrated her vagina with his penis for about one minute. She said that he ejaculated outside on the seat and then wiped his semen with a curtain cloth. After that he went back to his seat.

[41] The complainant said that the Accused dropped her off at Rosy Hut and gave her \$20.00 to buy a cake. She said that the Accused returned after about 30 minutes and drove her to Ashika's house for her birthday celebration. Ashika was a fellow church member. After dropping the complainant the Accused went away and returned in the evening with his family for the celebration. The complainant said that she did not report the incident to anyone at the celebration. She said that she was not sure whether anyone would believe her and that she did not trust Ashika.

[42] The complainant said that after the celebration, Ashika dropped her off at her home. She said that she did not report the incident to her mum. She said that she went straight to bed crying.

[43] The complainant said that when she went to school the next day she was not able to concentrate on her studies. She said that with the assistance of her form captain she spoke to her form teacher, Ms Ashmita Lata and informed her that something had happened between her and her pastor.

- [44] Ms Ashmita Lata told the court that the complainant had reported to her that her pastor, Ravinesh Chand had raped her. She referred the complaint to the school principal who then contacted the complainant's parents and the police.
- [45] There is a further direction that I wish to give you regarding the complaint evidence. In a case of sexual offence, recent complaint evidence is led to show consistency on the part of the complainant, which may help you to decide whether or not the complainant has told you the truth. It is for you to decide whether the evidence of this complaint given to the school teacher helps you to reach a decision, but it is important that you should understand that the complaint is not independent evidence of what happened between the complainant and the Accused, and it therefore cannot itself prove that the complaint is true. You must consider these matters if you decide to rely upon the complaint evidence to assess whether the complainant's evidence is consistent and therefore believable.
- [46] The complainant's mother, Hema Vikashni Maharaj told the court that on 21 March 2019 the Accused called her on her phone and asked her if she could send the complainant with him for her surprise birthday celebration. She said she agreed to send the complainant with the Accused because he was their pastor and that she trusted him. She said that when the complainant returned home that night she was distressed and crying. She said she came to know about the alleged incident the next day when she was called to the school by the complainant's teachers.
- [47] The next witness was Dr Bakani. Dr Bakani tendered the medical report of the complainant that was compiled by another doctor who currently is abroad. According to the report the complainant was medically examined on 23 March 2019 at 1pm at MSP Clinic. The injuries noted in the report are a vaginal laceration and an abrasion. Dr Bakani said that laceration is a tear while an abrasion is a bruise. The doctor said a laceration can be caused by a blunt force trauma while an abrasion can be caused by friction or rubbing. Now what weight you attach to the medical evidence is a matter for your bearing in mind that Dr Bakani was not the doctor who actually carried out the medical examination. The medical evidence of the vaginal injuries alone does not prove the charge but it is a piece of evidence that you may consider with all other evidence.

- [48] The next witness was the investigating officer, WC 387 Irinieta Naqolo. She was tendered for cross examination on the defence request. She confirmed that a DNA test was done of the complainant's clothing after the complaint was filed.
- [49] The final witness for the prosecution was Ms Naomi Tuitoga, a senior forensic biologist with the Fiji Police Force. She tendered the forensic report on the examinations of items in relation to the complainant and the Accused. She confirmed that she was not handed any curtain cloth to test for the Accused's DNA. She said that the swabs taken from the complainant's genitalia or clothing did not detect any foreign DNA, apart from the complainant's DNA. She is not aware of the date the swabs and the clothing were taken from the complainant, but the items were received by the forensic office on 29 May 2019. She said that foreign DNA can be present in the bodily swabs for 92 hours but if the complainant had showered or cleaned herself before the swabs are taken they would not be able to detect any DNA.
- [50] That was the prosecution case.
- [51] The Accused has elected to give evidence. He was not obliged to give evidence. He does not have to prove his innocence. He does not have to prove anything. However, he has chosen to give evidence. You must take what he has said into account when considering the issues of fact which you have to determine. It is for you to decide whether you believe the evidence of the Accused or whether it may be true. If the account given by the Accused is or may be true, then the Accused must be found not guilty. But even if you entirely reject the account given by the Accused, that would not relieve the prosecution of its burden of making you sure by evidence of the Accused's guilt in respect of the charge which you have to consider.
- [52] The Accused in his evidence denies the allegations. He said that the allegations are not true. He said that on 21 March 2019 he did call the complainant's mother and asked both the complainant and her mother to accompany him to buy a birthday cake for the complainant. The Accused said that when he arrived at their home only the complainant accompanied him to buy the cake as the complainant's mother was busy. He said that he drove the complainant to Rosy Hut and gave her \$40.00 to buy cake. He said that after

dropping the complainant at Rosy Hut he drove his taxi to Luvuluvu to drop off some passengers and returned after about 45 minutes to Rosy Hut to pick up the complainant. He said that after picking the complainant he dropped her at their church for the evening celebration on her mother's request. He said that after dropping the complainant at their church he returned to his home. He said that he came back to the church with his family and celebrated the complainant's birthday with other church members. After the celebration he returned to his home with his family.

[53] The Accused said that on 13 March 2019, he saw the complainant and her mother fighting during a church crusade at Koronivia. He said that the argument was about the complainant going out with a boy and having love bites. He said that he counselled the complainant in church on that Sunday upon her mother's request. He said that he also requested the complainant's mother to take away the complainant's phone. The Accused said that he did not say to Ashika that he loved the complainant.

[54] The defence called two further witnesses.

[55] Pastor Samuel Jeet gave evidence of the good character of the Accused. Pastor Jeet said he had known the Accused for more than 20 years. He said that the Accused is a very kind person and helps the people in the church.

[56] I need to give you a further direction on the good character evidence. Pastor Jeet has given evidence of the Accused's good character and as with any man of good character his good character supports his credibility. This means it is a factor which you should take into account when deciding whether you believe the Accused's evidence. In the second place, the fact that he is of good character may mean that he is less likely than otherwise might be the case to commit the offences he had been charged. It is for you to decide what weight you should give to these matters.

[57] The third defence witness was Ashika Devi. Ashika said that she had never said to the complainant that the Accused had told her that he was in love with the complainant. She said that the complainant did not tell her anything about what the Accused did to her on 21 March 2019.

- [58] That sums up the evidence for the defence.
- [59] The prosecution case is that the Accused drove the complainant to an isolated spot in his taxi, kissed her on her lips, touched her breast, forced her to perform oral sex, digitally penetrated the complainant's vagina with his finger and then had sexual intercourse with her, without her consent and knowing she had not consented. The prosecution submits the Accused is guilty of sexual assault and rape as charged on counts 1-4.
- [60] The defence case is that the allegations of sexual assault and rape are not true, but were fabricated by the complainant when the Accused counselled her and requested her mother to take her phone away. Counsel for the Accused says that the delay by the complainant in reporting the alleged incident to people she came in contact with on 21 March 2019 ..... after the alleged incident is inconsistent with the conduct of a truthful person who had been sexually assaulted. The defence says that you should, therefore, regard the complainant's evidence that the Accused sexually assaulted and raped her as false.
- [61] This is necessarily a matter which you should consider, but I must warn you that the delay or lack of a complaint does not necessarily indicate that the evidence of the complainant is false. It may indicate fabrication on the part of the complainant, but does not necessarily do so. There may be good reasons why a person who has been sexually assaulted hesitates in reporting immediately after the incident.
- [62] In this case, the complainant was a child and a female and the Accused was an adult male and a Church leader. She said she was confused and scared that no one would believe her if she reported the incident to anyone. Do you accept the complainant's reasons that she was confused and scared to raise alarm or to complain to be reasonable in the circumstances of this case. That is a matter for you to consider.
- [63] The prosecution's case wholly rests on the complainant's evidence. On count one, if you believe the complainant is telling you the truth that the Accused kissed her and sucked her breast and that those acts were contrary to the ordinary standards of respectable people in this community, then you render opinion that the Accused is guilty of that charge.

[64] On count two, if you believe the complainant is telling you the truth that the Accused penetrated her mouth with his penis without her consent and knowing she had not consented, then you render opinion that the Accused is guilty of that charge.

[65] On count three, if you believe the complainant is telling you the truth that the Accused penetrated her vagina with his finger without her consent and knowing she had not consented, then you render opinion that the Accused is guilty of that charge.

[66] On count four, if you believe the complainant is telling you the truth that the Accused penetrated her vagina with his penis without her consent and knowing she had not consented, then you render opinion that the Accused is guilty of that charge.

[67] But if you do not believe the account of the complainant or if you have a reasonable doubt about the guilt of the Accused, then you must find the Accused not guilty of the charges.

[68] On each count your opinions would be either guilty or not guilty. When you are ready with your opinions, please advise my clerk and the court will reconvene to receive them. Please now retire to deliberate on your opinions.

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State

Iqbal Khan & Associates for the Accused