

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 33 of 2017

STATE

V

PRASHANT RAJU

Counsel : Ms. P. Lata for the State.
: Mr. S. Nand for the Accused.

Dates of Hearing : 18, 19 and 20 May 2020
Closing Speeches : 21 May, 2020
Date of Summing Up : 21 May, 2020
Date of Judgment : 25 May, 2020

JUDGMENT

(The name of the complainant is suppressed she will be referred to as "PW")

1. The Director of Public Prosecutions charged the accused by filing the following information:

COUNT ONE

[REPRESENTATIVE COUNT]

Statement of Offence

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

Particulars of Offence

PRASHANT RAJU, between the 1st January, 2015 and the 31st of December, 2015 at Nadi in the Western Division, unlawfully and indecently

assaulted “PW” a 9 year old girl, by licking her vagina and sucking her breasts.

COUNT TWO

[REPRESENTATIVE COUNT]

Statement of Offence

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

Particulars of Offence

PRASHANT RAJU, between the 1st January, 2016 and the 30th of November, 2016 at Nadi in the Western Division, unlawfully and indecently assaulted “PW” a 9 year old girl, by licking her vagina and sucking her breasts.

COUNT THREE

Statement of Offence

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

Particulars of Offence

PRASHANT RAJU, between the 1st January, 2016 and the 30th of November, 2016 at Nadi in the Western Division, had carnal knowledge with “PW”, a 10 year old girl.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

PRASHANT RAJU, on the 22nd of December, 2016 at Nadi in the Western Division, unlawfully and indecently assaulted “PW” a 10 year old girl, by licking her vagina and sucking her breasts.

COUNT FIVE

Statement of Offence

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

Particulars of Offence

PRASHANT RAJU, on 22nd of December 2016 at Nadi in the Western Division, had carnal knowledge with “PW”, a 10 year old girl.

2. In the summing up delivered by this court the assessors were reminded that after the prosecution had closed its case, the accused had a case to answer in respect of counts one, two and three only as per the information filed.
3. The three assessors returned with unanimous opinion that the accused was guilty of two counts of sexual assault (counts one and two) and one count of rape (count three) as charged.
4. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
5. The prosecution called three witnesses whereas the defence called the accused and his defacto wife.
6. The complainant who was 9 years of age in 2015 informed the court that the accused was her father and that she lived with her parents, two sisters and a brother at Solovi, Nadi.
7. From the middle of November 2015 to November 2016 the accused would come into the complainant’s bedroom, after removing her clothes he would lick her vagina and suck her breasts for about 4 to 5 minutes.

8. The complainant also recalled that during Diwali time in 2016 the accused came into her room removed his clothes and also her clothes and then started licking her vagina and sucking her breasts. The accused then came on top of her and had sexual intercourse by penetrating her vagina with his penis for about two to three minutes. According to the complainant this act of sexual intercourse happened once only, and the accused had licked her vagina and sucked her breasts on four occasions.
9. The reason the complainant knew about sexual intercourse was because in class 7 she had learnt about the male and female reproductive system.
10. The accused only stopped having sexual intercourse after he heard someone calling his name from outside the house so he quickly stood up, got dressed and went outside. The complainant did not tell anyone about what the accused had done to her since she was threatened by the accused on all occasions that if she told anyone or her mother he will kill or hurt her.
11. The accused used to do this when the complainant's mother and other siblings would go to town to do shopping leaving the complainant and her 2 year old brother at home.
12. The complainant felt very bad about what her father was doing to her. In late 2016 the complainant, her mother and her siblings left their family home at Solovi. As a result of her father's actions the complainant could not concentrate in her studies since she always thought about what her father was doing to her.
13. At Loloma Home the complainant met Adi Laite who was looking after the complainant, her mother and her siblings she told Laite everything about what her father had done to her. Laite reported the matter to the police.

14. In regards to her relationship with her mother the complainant said that they did talk to each other about “girl things” but not about what the accused had done to her. The complainant agreed that her father left early for work and came home late, however, the first time the accused had licked her vagina and sucked her breasts was in January, 2015 during the daytime.
15. The reason why the complainant did not complain to her mother was because her mother was on her father’s side. The complainant also did not tell her teachers at school or to her aunty Roshni or the Social Welfare Officers. The complainant said that she did not trust people and she was not very close to her mother also she did not know how to tell her mother about what her father was doing to her.
16. When the accused had put his penis inside her vagina there was bleeding but not enough to sip onto the bed because it was light bleeding.
17. The complainant maintained that her father had licked her vagina and sucked her breasts and also had sexual intercourse with her. The complainant also stated that she told the truth in court. When it was suggested that the complainant was making the allegations as revenge because the accused used to assault her and her mother the complainant stated that it was true her father used to smack her and her mother.
18. The complainant clarified that she did not mention anything to her aunty Roshni because she did not know her aunt very well. She also did not tell her elder sister because they used to fight with each other. She did not tell anything to the Social Welfare Officer because she did not know them.
19. In respect of her statement to withdraw her complaint, the complainant said her parents had told her to say that what her father had done to her

was all lies that he did not do anything to her, she was also forced and pressured by her mother to withdraw the complaint.

20. The second witness Adi Laite informed the court that she is the Director of Loloma Home and Care Centre. The complainant, her mother and her siblings were referred to the witness to provide them with shelter at the request of the Social Welfare Department.
21. When the complainant was staying at the Loloma Home the witness noticed the complainant was showing signs of vomiting every day and was drinking water every time she saw the complainant. This prompted the witness to ask the complainant if there was anything wrong with her. The complainant told the witness that her father had sexual intercourse with her for about ten (10) times. Adi after informing the mother of the complainant reported the matter to the police.
22. The final prosecution witness was Dr. Lice Vaniqi, on the 18th January, 2017 she had examined the complainant. The Fiji Police Medical Examination Form of the complainant was marked and tendered as prosecution exhibit no.1.
23. Upon examination of the patient the doctor noted the following specific medical findings:
 - 1) The hymen was not intact meaning the hymen was not visible upon vaginal examination;
 - 2) No bruises were noted around the perineal region.
24. In the opinion of the doctor the complainant must have had sexual intercourse.

25. The doctor clarified that in this case the patient had not mentioned anything about digital manipulation. She also stated that bleeding in a child would be seen if there was recent forceful sexual intercourse, whether the bleeding will be heavy or light will depend since every person was different from the other.
26. The accused informed the court that the complainant is his daughter born out of his defacto relationship with Shivangini, they have three daughters and one son. The accused works as a lorry driver, as part of his employment he works from Monday to Saturday he does not take any holidays or leave from work. Apart from being a lorry driver, the accused is a part-time motor mechanic and on Sundays he used to do mechanical works as well. The accused stated that he hardly stayed at home but before going to work he fills the drums with water from the nearby police post.
27. The accused has a good relationship with his wife she has never betrayed him furthermore, his relationship with his children was good as well. The accused denied committing the offences as alleged by the complainant. He stated that he was not at home as mentioned by the complainant because he would leave home early and come home late at night when the children would be sleeping. The accused also said the allegations were false.
28. It is his wife who did the shopping for the household with all the children accompanying her to town. One day his wife and children left his house because of water shortage which was an on-going problem for the family. On this day the accused and his wife had an argument so she left the house, however, she did come back and seek forgiveness for leaving the house.
29. The water problem faced by the family started in 2016 till 2017. In 2016 on Boxing Day the accused came home after filling water and he saw that no one was at home.

30. According to the accused, the complainant is lying about the allegations against him because the complainant didn't say anything to her mother and when she went to Loloma Home then he found out that she had made the allegations against him.
31. After the complainant returned from Loloma Home, the accused is aware that the complainant made a statement to the Police and Director of Public Prosecutions for the withdrawal of her complaint but he did not force her to make that withdrawal statement.
32. The accused cannot understand why the complainant has made the allegations against him.
33. Shivangini Latchmi has been living with the accused for the last 16 years in a defacto relationship. The complainant is their daughter. Shivangini stays home and does the entire house work her relationship with her daughters is good and she loves her children. Her daughters mean a lot to her, she never growls at them and whatever she says the daughters respect it. Her daughters share everything with her such as whatever they do in school or at home.
34. The witness further stated that she has a good relationship with the accused who keeps her happy by doing a lot for her and also treats her nicely. The accused also treats all his daughters nicely, he has never ill-treated the complainant.
35. Whenever she goes shopping all the children go with her in 2016 her youngest child was 1 year old so she needed someone to look after the baby and also do shopping hence all her children would go along to help her. The accused leaves home very early in the morning sometimes 4.30am to

5.30am and returns home at 12pm or 1pm or sometimes 2pm to pick his lunch. The accused works from Mondays to Saturdays and sometimes Sundays if he is on call.

36. The witness stated on Christmas day in 2016 she left the house of the accused since there was no water at home for nearly one year. The accused had gone somewhere that night and there was no water for cooking and for the children to have their bath. The accused came home at 1am the next day when the witness confronted the accused there was an argument. In 2016 the complainant did not make any complaint to her or was upset about anything and also she did not notice any blood stain on any of the complainant's clothes.
37. At Loloma Home after about two weeks Adi Laite informed the witness that the complainant had been raped by her father, she was shocked and crying. After two years at the Loloma Home the witness returned home with her children.
38. The witness stated that all the allegations against the accused were not true, she never left any of her children home. The accused never stays home, all the time he works to earn money for his children.
39. Finally the witness had not seen the complainant in pain or notice any change in her behaviour or attitude during Diwali time in 2016. The complainant was normal playing with her siblings and the witness did not notice anything wrong with the complainant.
40. The witness denied forcing the complainant to withdraw her complaint the statement was made by the complainant after returning from the Loloma Home when everyone was living in Solovi.

41. The witness agreed that she was financially and emotionally dependent on the accused and that apart from her husband's house she has nowhere else to go to. However, she denied she was trying to save the accused. The witness had decided to go back to her husband's house without finding out if the water problem had been solved or not.
42. Taking into consideration the evidence adduced by the prosecution and the defence I accept the evidence of the complainant as truthful and reliable. I have no doubt in my mind that the complainant told the truth in court. She gave a coherent account of what the accused had done to her.
43. I also accept that the complainant was afraid of her father hence she did not inform anyone about what she was going through and also she did not trust her mother. I also accept the complainant did not know how she could tell her mother about what her father was doing to her.
44. The complainant struck me as a reserved and introvert person who would not share her personal problems with anyone she did not trust or know. Moreover, also considering the age of the complainant at the time it is only natural that a child of 9 to 10 years who was undergoing unexpected sexual encounters on different days from within the household cannot be expected to remember precise details of dates and time of what was happening to her. The accused was her father a person of authority and a figure of respect in the household, however, whatever the complainant told the court was material evidence in respect of what the accused had done to her.
45. The complainant was also able to withstand cross examination and was not discredited. Although there is a delay in the reporting of the incidents by the complainant, considering the circumstances of the complainant and her age the delay in reporting does not adversely affect the reliability of the complainant's evidence.

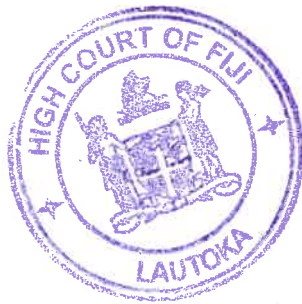
46. Although the complainant did not tell Adi Laite anything about the incidents of sexual assault this failure on the part of the complainant does not also adversely affect the reliability of the complainant's evidence. In any event the complainant did disclose material and relevant information to Adi about the unlawful conduct of the accused. There is no requirement upon a complainant to tell all the details of the unlawful sexual conduct by the accused (*see Anand Abhay Raj vs. State, CAV 0003 of 2014 (20 August, 2014)*). The fact that the complainant told Adi Laite that her father had raped her was sufficient in the circumstances to alert Adi that something had happened to the complainant.
47. Even though the complainant agreed that her father left early for work and came home late from work that does not mean that the accused did not come home early. The wife of the accused very confidently said that the accused would come home to pick lunch since the accused left early in the morning for work. The complainant also stated that the first time the accused had licked her vagina and sucked her breasts was in January, 2015 during day time. I do not accept the complainant had any motivation to take revenge from the accused due to his assaults on her.
48. The fact that the complainant did not tell anyone about what the accused was doing to her is understandable when the opportunity presented itself the complainant did tell Adi Laite that the accused had raped her. The complainant was staying at the Loloma Home for some time and she knew Adi Laite and was comfortable in sharing her problems.
49. Adi Laite also told the truth when she narrated what the complainant had told her. The inconsistency between her evidence in court and her police statement that she did not mention anything about the complainant showing signs of vomiting in her police statement was not a significant inconsistency. I accept the evidence of this witness as reliable and credible.

50. The doctor who had examined the complainant also gave a clear account of her observations and the medical findings. This court also accepts the opinion of the doctor, her observations and her evidence as reliable and credible.
51. On the other hand, the accused's demeanour in court was not consistent with his honesty he was not forthright in his evidence there were instances when he did not answer questions in a straight forward manner. He did not tell the truth when he denied the allegations. I reject the evidence of the accused as unreliable and untruthful it does not make sense that the accused would live a life style as mentioned by him.
52. Furthermore, it was obvious to me that the wife of the accused was trying to protect the accused, Shivangini made it clear that she is dependent on the accused and it was obvious that this witness could go to any length to protect the accused. This witness also did not tell the complete truth when she told the court that she left the house of the accused due to water problems when the accused had said that he used to cart water to his house from the nearby police post before going to work every morning.
53. The accused was portraying a picture of a busy father who did not spend any quality time with his children because he left home early in the morning and came home late at night every Mondays to Saturdays so how could he have committed the offences alleged. On the contrary the wife of the accused told the court the accused used to come home to pick his lunch which does suggest that the accused was coming home during the day.
54. When Shivangini returned home at Solovi after staying 2 years at the Loloma Home she did so without inquiring whether the water problem had been solved or not. I also have difficulties in accepting that Shivangini

would always take all her children to town, including her 1 year old son and other three young children for shopping.

55. I reject the evidence of Shivangini as unworthy of belief as well. This witness has a vested interest in making sure that the accused is not in any trouble whatsoever.
56. It appeared to me that both the defence witnesses had a common theme in mind which was apparent from their evidence. I also accept that the accused and his wife had forced the complainant to make the withdrawal of complaint and that Shivangini played a leading role in this.
57. This court accepts the evidence of all the prosecution witnesses as reliable and credible. On the other hand this court rejects the defence of denial as untenable and implausible considering the totality of the evidence.
58. The defence has not been able to create a reasonable doubt in the prosecution case.
59. This court is satisfied beyond reasonable doubt that the accused between the 1st January, 2015 and the 31st December, 2015 unlawfully and indecently assaulted the complainant "PW" a 9 year old girl by licking her vagina and sucking her breasts.
60. This court is satisfied beyond reasonable doubt that the accused between the 1st January, 2016 and the 30th of November, 2016 unlawfully and indecently assaulted "PW" a 9 year old girl, by licking her vagina and sucking her breasts.
61. This court is also satisfied beyond reasonable doubt that the accused between the 1st January 2016 and the 30th of November, 2016 had carnal knowledge with "PW" a 10 year old girl.

62. I agree with the unanimous opinion of the assessors that the accused is guilty of two counts of sexual assault and one count of rape as charged.
63. In view of the above, I find the accused guilty of two counts of sexual assault and one count of rape and I convict him accordingly. In respect of counts four and five the accused is acquitted.
64. This is the judgment of the court.



Sunil Sharma
Judge

At Lautoka

25 May, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs. Fazilat Shah Legal, Lautoka for the Accused.