

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 63 OF 2016

BETWEEN : ***STATE***

AND : ***SAIYAD KHAN***
(Trial in Absentia)

Counsel : ***Mr. A. Singh with Mr. Chand for the State***
(Accused absent and unrepresented)

Hearing on : ***28th of May 2020 – 29th of May 2020***

Summing up on : ***01st of June 2020***

Judgment on : ***09th of June 2020***

JUDGMENT

1. The accused, Saiyad Khan was charged with 1 count of Rape. He pleaded not guilty to that charge and the matter was taken up for trial. Before the matter was taken up for trial the accused has failed to appear in court since the 15th of February 2019. His counsel has later withdrawn due to lack of instructions. The prosecution has informed that the accused has left the country in violation of bail conditions. Every endeavor to bring the accused to court has failed and being satisfied that the accused is absent without a valid excuse, the court has fixed this matter for trial in absentia.

2. The charge was;

COUNT 1

Statement of Offence

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

Particulars of Offence

Saiyad Khan aka Dennis, on the 29th day of September 2014, at Nadi, in the Western Division, had carnal knowledge of Shayal Shika Kumar, without her consent.

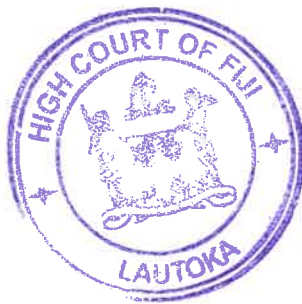
3. The ensuing trial lasted for 2 days. The complainant Shayal Shika Kumar, Mr. Sandip Patil who worked for the accused and a doctor on behalf of the doctor who examined the alleged victim, gave evidence for the prosecution.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged count of Rape.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.

Analysis

6. When analyzing the evidence I am mindful that only direct evidence which relates to the alleged incidents is the evidence of the PW1. I am also mindful that law does not require any corroboration of the complainant's evidence as per section 129 of the Criminal Procedure Act. Therefore, the ultimate question would be whether her evidence would be trustworthy and reliable.
7. The PW1's evidence is very clear. There are hardly any contradictions apparent. Though there were few inconsistencies with the evidence of the PW2, they are

not on material points. Furthermore, many of the relevant factors are much consistent with the evidence of PW2 and PW3. The evidence of the PW2 establishes that the accused has had sexual intercourse with the complainant on that day. Therefore, I have no reason to disbelieve the evidence lead by the prosecution through the PW1, PW2 and the PW3.

8. Therefore the assessors were quite correct in opining that the accused is guilty. In the light of the available evidence they had no choice.
9. This court has no option but to concur with the unanimous opinion of the assessors.
10. I convict Mr. Saiyad Khan of the offence of Rape.
11. This is the Judgment of the Court.




Chamath S. Morais
JUDGE

Solicitors for the State* : *Office of the Director of Public Prosecutions, Lautoka
Solicitors for the Accused* : *The accused absent and unrepresented.