

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 304 of 2018**

**STATE**

**V**

**SEGRAN CHANDAR**

**Counsel** : Ms. Swastika Sharma for the State  
Mr. Ashneel Nand for the Accused

**Dates of Trial** : 21-23 and 27-28 January 2020

**Summing Up** : 30 January 2020

**Judgment** : 5 February 2020

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "ST".*

## **JUDGMENT**

[1] According to the Amended Information filed by the Director of Public Prosecutions (DPP), the accused Segran Chandar was charged with the following offences:

### **COUNT ONE**

*Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (c) of the Crimes Act 2009.

*Particulars of Offence*

**SEGRAN CHANDAR**, on the 6<sup>th</sup> day of June 2018, at Suva, in the Central Division, penetrated the mouth of **ST** with his penis, without his consent.

**COUNT TWO**

*Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (a) of Crimes Act 2009.

*Particulars of Offence*

**SEGRAN CHANDAR**, on the 6<sup>th</sup> day of June 2018, at Suva, in the Central Division, unlawfully and indecently assaulted **ST**, by sucking his penis.

**COUNT THREE**

*Statement of Offence*

**RAPE**: Contrary to Section 207 (1) and (2) (c) of Crimes Act 2009.

*Particulars of Offence*

**SEGRAN CHANDAR**, on the 7<sup>th</sup> day of June 2018, at Suva, in the Central Division, penetrated the mouth of **ST** with his penis, without his consent.

**COUNT FOUR**

*Statement of Offence*

**SEXUAL ASSAULT**: Contrary to Section 210 (1) (b) (i) of the Crimes Act 2009.

*Particulars of Offence*

**SEGRAN CHANDAR**, on the 7<sup>th</sup> day of June 2018, at Suva, in the Central Division, procured **ST** to commit an act of gross indecency.

- [2] The accused pleaded not guilty to the four charges and the ensuing trial was held over 5 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found the accused guilty of the said four charges.

- [4]** I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5]** During my summing up I explained to the Assessors the salient provisions of Section 207 (1) and (2) (c) of the Crimes Act No. 44 of 2009 (Crimes Act); and also the salient provisions of Section 210 (1) (a) of the Crimes Act and Section 210 (1) (b) (i) of the Crimes Act.
- [6]** Accordingly, I directed the Assessors that in order for the prosecution to prove the first count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
  - (ii) On the specified day (in this instance 6 June 2018);
  - (iii) At Suva, in the Central Division;
  - (iv) Penetrated the mouth of complainant, ST, with his penis;
  - (v) Without the consent of the complainant; and
  - (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not he was consenting.
- [7]** Similarly, I directed the Assessors that in order for the prosecution to prove the third count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
  - (ii) On the specified day (in this instance 7 June 2018);
  - (iii) At Suva, in the Central Division;
  - (iv) Penetrated the mouth of complainant, ST, with his penis;
  - (v) Without the consent of the complainant; and
  - (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not he was consenting.
- [8]** I further directed the Assessors that in order for the prosecution to prove the second count of Sexual Assault, they must establish beyond any reasonable doubt that;
- (i) The accused;
  - (ii) On the specified period (in this instance 6 June 2018);
  - (iii) At Suva, in the Central Division;

(iv) Unlawfully and indecently assaulted ST, by sucking his penis.

[9] Finally I directed the Assessors that in order for the prosecution to prove the fourth count of Sexual Assault, they must establish beyond any reasonable doubt that;

(i) The accused;

(ii) On the specified date (in this instance 7 June 2018);

(iii) At Suva, in the Central Division;

(iv) Procured ST to commit an act of gross indecency, without the consent of the complainant.

[10] All the above individual elements were further elaborated upon in my summing up.

[11] The prosecution, in support of their case, called the complainant ST, and his mother, Mereseini Vuniwaqa.

[12] The accused gave evidence on his own behalf. He also called two other witnesses: Malini Rina Roy, his wife; and Avinesh Chand, the Maintenance Supervisor at the Annandale Apartments. The defence also tendered (with the consent of both parties) the statement made to the police, on 8 June 2018, by the complainant as Defence Exhibit **DE 1**.

[13] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Admitted Facts*" without placing necessary evidence to prove them:

1. The complainant in this matter is ST.
2. The complainant is 15 years old and his date of birth is 16<sup>th</sup> May 2003.
3. The complainant resides at Lot 48 Cunningham Old Road with his mother namely Mereseini Vuniwaqa and his brother namely Jekope.
4. The complainant is staying home.
5. The accused in this matter is Chandar Segran.
6. The accused is 52 years old.
7. The accused is an electrician.
8. The alleged incident occurred on the 6<sup>th</sup> and 7<sup>th</sup> of June 2018.
9. Prior to the alleged incident, the complainant knew the accused for 2 weeks.

10. The complainant knew the accused as the accused was doing wiring and electrical works at the complainant's residence.
11. On 6<sup>th</sup> June 2018, the accused with his wife picked the complainant at 8.30 a.m. in his blue car from the complainant's residence.
12. The accused first dropped his wife at her work place and then they went to Annandale Apartment where the accused was doing wiring works.
13. They both went to room 305 where the accused was wiring lights and the complainant was assisting him.
14. The accused and the complainant finished work and then they both went to pick up the accused's wife from her work place at Kontai Plaza situated at Mark Street, Suva.
15. On 7<sup>th</sup> June 2018, at about 8.30 a.m., the accused together with his wife went to the complainant's residence to pick the complainant.
16. The accused and the complainant first dropped the accused's wife at her work place, then they went to Annandale Apartment for work.
17. They were doing electrical repairing in room 303 at Annandale Apartment before lunch.
18. At 3.00 p.m., the accused and the complainant finished work after which they both went together to pick the accused's wife from her work place at Mark Street, Suva after which they dropped the complainant at his residence.
19. The complainant was medically examined on 8<sup>th</sup> June 2018.

**[14]** Furthermore, in terms of the provisions of Section 135 of the Criminal Procedure Act, the prosecution and the defence have consented to treat the following facts as "*Additional Admitted Facts*" without placing necessary evidence to prove them:

1. The admissibility of the following document and its contents are not contested and the same will be tendered during trial by consent:
  - Photographs of Room 305 at Annandale Apartment.

**[15]** Since the prosecution and the defence have consented to treat the above facts as "*Admitted Facts*" and "*Additional Admitted Facts*", without placing necessary evidence to prove them, these facts are considered as proved beyond reasonable doubt.

**[16]** The complainant is now 16 years of age. His date of birth is 16 May 2003. Therefore, during the time of the alleged offences, he would have been 15 years old (These are agreed fact as well).

- [17] The complainant clearly testified to all the acts that the accused had perpetrated on him, on 6 June 2018 and 7 June 2018, while he was assisting the accused with the electrical work at the Annandale Apartments. I have summarized the complainant's evidence at length in my summing up. I accept the evidence of the complainant as truthful, credible and reliable.
- [18] The complainant testified as to how the accused had put his penis into the complainant's mouth without his consent, on 6 June 2018. He also testified as to how the accused had unlawfully and indecently sucked his penis on the same day.
- [19] Further the complainant testified as to how the accused had put his penis into the complainant's mouth without his consent, on 7 June 2018. He also testified as to how the accused had on the same day procured the complainant to commit an act of gross indecency, by getting the complainant to kiss him on his right breast.
- [20] Prosecution witness Mereseini Vuniwaqa, the mother of the complainant, testified as to how the complainant had related to her after returning home on the night of 7 June 2018, the alleged acts which the accused had committed on him, on 6 June and 7 June 2018.
- [21] I am satisfied that the complainant made a prompt and a proper complaint of the incidents to his mother, which was on the second day the incidents occurred. He testified that he did not tell anyone about what happened on the first day as he thought the accused would not do anything to him on the next day (second day). It is my opinion that the complainant's credibility is enhanced and strengthened in view of this recent complaint.
- [22] The accused totally denies all the allegations against him. He admits that he had requested the complainant to assist him with his electrical work on 6 and 7 June 2018.
- [23] He admits that in the morning of 6 June 2018, he along with his wife, had picked up the complainant from his residence. Thereafter, after dropping his wife at work, he together with the complainant had gone to the Annandale Apartments. The accused had been working in room 305 that day and the complainant had been assisting him.
- [24] The accused testified that he and the complainant took a lunch break. They went to an Indian Restaurant in Suva town for lunch. He testified that even his wife had joined them for lunch.
- [25] After lunch he and the complainant had returned to the Annandale Apartments and continued working in room 305. They had finished work around 3.00 in the afternoon. Thereafter, he and the complainant had gone to pick up the accused's wife from her work place at Mark Street Suva.
- [26] That day the complainant had been dropped off at his residence at around 7.30 in the evening.

- [27] The accused admits that on the morning of 7 June 2018, he along with his wife, had picked up the complainant from his residence. Thereafter, after dropping his wife at work, he together with the complainant had gone to the Annandale Apartments. The accused had been working in room 303 before lunch that day and the complainant had been assisting him.
- [28] The accused testified that he dropped the complainant at his residence for lunch. Thereafter, he had picked the complainant up at 1.30 and gone back to the Annandale Apartments.
- [29] On reaching the apartment after lunch, the Maintenance Supervisor had wanted the accused to check on the ceiling fan in room 306. The accused had checked on the fan and completed the repair. They had finished work around 3.00 in the afternoon. Thereafter, he and the complainant had gone to pick up the accused's wife from her work place at Mark Street Suva.
- [30] That day the complainant had been dropped off at his residence at around 8.00 in the evening.
- [31] Malini Rina Roy, the wife of the accused testified on his behalf. She confirmed having gone with the accused to pick up the complainant from his residence in the morning of 6 June 2018. In the afternoon both the complainant and the accused had come to pick her up from her work place. They had dropped off the complainant at his residence later in the evening.
- [32] She further testified that in the morning of 7 June 2018, she and the accused had picked up the complainant from his residence. That afternoon too both the complainant and the accused had come to pick her up from her work place. They had dropped off the complainant at his residence around 7.30 in the evening that day.
- [33] Avinesh Chand, the Maintenance Supervisor at Annandale Apartments testified that the accused had come to the Annandale Apartments on 6 and 7 June 2018, to carry out electrical work. On both days, the accused had been accompanied by the complainant. On 6 June 2018, he had assigned the accused with work in room 305; and on 7 June 2018, he had assigned the accused with work in rooms 303 and 306.
- [34] Avinesh Chand testified that on both days he had come to check on the work being carried out by the accused in rooms 305 and 303. He also testified that on 7 June 2018, whilst the accused was checking on the fan in room 306, he had remained in the room throughout the said period.
- [35] The Assessors have found the evidence of the prosecution as truthful and reliable as they have by their unanimous decision found the accused guilty of all the charges. Therefore, it is clear that they have rejected the position taken up by the defence.

[36] In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in respect of all four counts.

[37] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences of Rape (Counts 1 and 3) and Sexual Assault (Counts 2 and 4) with which the accused is charged.

[38] In the circumstances, I find the accused guilty of the offences of Rape (Counts 1 and 3) and Sexual Assault (Counts 2 and 4) as charged.

[39] Accordingly, I convict the accused of the offences of Rape (Counts 1 and 3) and Sexual Assault (Counts 2 and 4) as charged.



A handwritten signature in black ink, appearing to read "Riyaz Hamza".

**Riyaz Hamza**  
**JUDGE**  
**HIGH COURT OF FIJI**

AT SUVA

Dated this 5<sup>th</sup> Day of February 2020

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Suva.**  
**Solicitors for the Accuse** : **Kohli & Singh, Barristers and Solicitors, Suva.**