

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 192 OF 2018

BETWEEN : **STATE**

AND : **SACHIN SHAVNEEL CHAND**

Counsel : **Ms. P. Lata for the State**
Mr. M. Yunus with Ms. Shafique for the Accused

Hearing on : **06th & 08th of July 2020**

Summing up on : **09th of July 2020**

Judgment on : **21st of July 2020**

JUDGMENT

1. The accused, Sachin Shavneel Chand was charged with 1 count of Rape and 1 count of Criminal Intimidation. He pleaded not guilty to the charges and the matter was taken up for trial.
2. The charges were;

COUNT 1

Statement of Offence

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

Particulars of Offence

Sachin Shavneel Chand, between the 01st of May, 2018 and the 31st of May, 2018 at Nadi in the Western Division, had carnal knowledge with Swasthika Sanjeeta Prasad without her consent.

COUNT 2

Statement of Offence

Criminal Intimidation: Contrary to section 375 (1)(a) (i) and (iv) of the Crimes Act of 2009.

Particulars of Offence

Sachin Shavneel Chand, between the 01st of May, 2018 and the 31st of May, 2018 at Nadi in the Western Division, without lawful excuse and with intent to cause alarm to Swasthika Sanjeeta Prasad threatened her with a kitchen knife.

3. The ensuing trial lasted for 2 days. The complainant Swasthika Sanjeeta Prasad and her father, Mr. Rajendra Prasad gave evidence for the prosecution. The Accused having understood his rights elected to remain silent without calling any witnesses. At the conclusion of the prosecution case defense made an application under section 231(1) of the Criminal Procedure Act in regards to the 2nd count submitting that the State has failed to submit a substantial case to answer. The State having conceded so and the Court being satisfied that the State has failed to bring on sufficient evidence on a separate 2nd count acquitted the accused of the alleged 2nd count.
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 1st 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 not very clear. There are many contradictions apparent *inter-se and per -se*. There is no denial by the accused that they had sexual intercourse on the given day. The issue would be whether it was consensus or not. The complainant has not complained of it to any one until she became aware of her pregnancy. That was nearly about 3 months from the date of the alleged incident.

8. The alleged incident has happened 2 days after her menstrual discharge (menses) was over. As for her evidence that was the only time she has had sexual contact ever in her life up to then. Though she denied the defense has suggested that she has had sexual intercourse with the accused on 5 days and visited her home on 8 days during the month of May 2018. It is common knowledge that possibility of having a pregnancy is far remote, by having sexual intercourse on the 2nd day after menses. All in all, the accused's position casts a strong suspicion on the prosecution version of events.

9. Furthermore, it is stated that the accused came to her place at around 1.00am on the day of the alleged incident and that was the first time he has ever come to her place. It is evident the accused is not from that area and is a stranger to that area. It is a fact that the father of the PW1 too was at home, sleeping within 10 meters of the place where the alleged act took place. The PW1 admits that if she raised her voice, her father would have got up and they were talking in soft voices. The accused is said to have sworn at her to get the door opened and thereafter once inside the house. The prosecution alleges that the accused raped

the PW1 under such circumstances. In my view, the PW1's version is not only improbable but also impossible.

10. Therefore, I have doubts of the alleged commission by the accused and I am not convinced beyond a reasonable doubt that the accused has committed the alleged offence. In my view the prosecution has failed to prove the alleged offence beyond a reasonable doubt and the benefit of such is the entitlement of the accused.
11. Therefore the assessors were incorrect in opining that the accused is guilty. In the light of the available evidence I disagree with the opinion of the assessors.
12. I acquit Mr. Sachin Shavneel Chand of the alleged offence of Rape.
13. 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 : **MY Law, Ganga Singh Street, Ba**