

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CRIMINAL CASE NO. HAC 37 OF 2017

BETWEEN : **STATE**

AND : **HARISH RAJ KUMAR**

Counsel : **Ms. S. Naibe for the State**
Ms. M. Baleilevuka with Ms. E. Wakowako for the Accused

Hearing on : **14th & 16th of July 2020**
Summing up on : **23rd of July 2020**
Judgment on : **30th of July 2020**

JUDGMENT

1. The accused, Mr. Harish Raj Kumar is charged with 3 counts of Rape, as detailed below, alleged to have committed on Riteshni Radika Singh who was a tenant of him.
2. The details of the offences that he was charged by the Director of Public Prosecutions are as follows;

COUNT 1

Statement of Offence

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

Particulars of Offence

Harish Raj Kumar, on the 09th day of December 2016, at Lautoka in the western division, had carnal knowledge of Riteshni Radika Singh without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

Harish Raj Kumar, on the 12th day of December 2016, at Lautoka in the western division, had carnal knowledge of Riteshni Radika Singh without her consent.

COUNT 3

Statement of Offence

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

Particulars of Offence

Harish Raj Kumar, on the 13th day of December 2016, at Lautoka in the western division, had carnal knowledge of Riteshni Radika Singh without her consent.

3. The accused pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant Riteshni Radika Singh gave evidence for the prosecution while the accused gave evidence in denial of the charge and called a witness on his behalf.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty of the alleged three counts 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.
6. The sole witness to substantiate on the alleged incidents is the PW1, Riteshni Radika Singh. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

Analysis

7. All three alleged offences have taken place within a period of 4 days. When analyzed, the 1st being on the Friday the 9th of December 2016, 2nd being on Monday the 12th of December 2016 and 3rd being on Tuesday the 13th of December 2016, they were alleged to have taken place on three consecutive weekdays.
8. PW1 has been unaware of the accused's presence until she was pushed on to the bed on all three occasions. Further she has seen the perpetrator only after the alleged incident on all three occasions. On the 1st alleged incident, she has been watching the TV, on the 2nd alleged incident she has been putting the mattress up and on the 3rd alleged incident she has been dressing up, when she was pushed on to the bed. She has had no time to see perpetrator as he has covered her face with a pillow on all three days. He has held the pillow with one hand and undressed himself with the other hand on all three occasions. Her hands and feet were free and she has struggled to free herself on all three occasions.
9. In addition, her 6 year old child has been in the adjoining room on all three occasions. She has not asked him whether he saw or heard anything in any of those occasions. But told him to not to tell anyone. When considered altogether, the evidence of PW1 does not seem probable or acceptable.
10. In law, the prosecution has to prove the all essential ingredients of rape. PW1 admits that she reported the matter to the police on the 16th of December 2016. She concedes that she reported the incidents to be consensual, then. Her explanation that she was pressurized by her husband seems improbable. Then the question would be the reliability of her evidence. As she was the sole witness as to the all these allegations, I feel it is too dangerous to rely on her evidence.
11. I am also mindful that the accused bears no burden to prove his innocence. Therefore even if he has lied or given incorrect instructions, it should not be considered against him. His conduct would not strengthen the prosecution case. The burden of proof should always be with the prosecution.
12. In my view, it would be unsafe for the court to rely on the evidence of the PW1. Therefore, I agree with the unanimous opinion of the assessors.

13. In the result, I find the accused not guilty of all the 3 counts.
14. I acquit the accused Harish Raj Kumar of all 3 counts of rape.
15. This is the Judgment of the Court.




Chamath S. Morais
JUDGE

Solicitor for the Prosecution : ***Office of the Director of Public Prosecution, Lautoka***
Solicitor for the Accused : ***Office of the Legal Aid Commission, Lautoka***