

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 196 of 2019

STATE

V

SANJEET SINGH

Counsel : Ms. Sheenal Swastika for the State
Ms. Swarvana Prakash for the Accused

Dates of Trial : 20-23 July 2020

Summing Up : 28 July 2020

Judgment : 31 July 2020

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

JUDGMENT

[1] The accused, Sanjeet Singh, was charged with the following offences:

COUNT ONE

(Representative Count)

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, between the 1st day of January 2014 to the 31st December 2014, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, had carnal knowledge of **SSN**, a child under the age of 13 years.

COUNT TWO

(Representative Count)

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, between the 1st day of January 2015 to the 31st December 2015, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, had carnal knowledge of **SSN**, a child under the age of 13 years.

COUNT THREE

(Representative Count)

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, between the 1st day of January 2016 to the 31st December 2016, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, had carnal knowledge of **SSN**, without her consent.

COUNT FOUR

(Representative Count)

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, between the 1st day of January 2017 to the 31st December 2017, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, had carnal knowledge of **SSN**, without her consent.

COUNT FIVE

(Representative Count)

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, between the 1st day of January 2017 to the 31st December 2017, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SSN**, by fondling her breasts.

COUNT SIX

(Representative Count)

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, between the 1st day of January 2018 to the 21st October 2018, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, had carnal knowledge of **SSN**, without her consent.

COUNT SEVEN

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, on the 22nd day of October 2018, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, unlawfully and indecently assaulted **SSN**, by fondling her breast.

COUNT EIGHT

Statement of Offence

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

Particulars of Offence

SANJEET SINGH, on the 22nd day of October 2018, at the Manoca Squatter Settlement, Nausori, in the Eastern Division, had carnal knowledge of **SSN**, without her consent.

- [2] The accused was not present during the course of the trial. Thus he is deemed to have pleaded not guilty to all the charges. The ensuing trial was held over 4 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, two of the Assessors found the accused not guilty of all eight counts, while one Assessor found the accused guilty of the six counts of Rape, but not guilty of the two counts of Sexual Assault (Counts 5 and 7). Therefore, the Assessors have returned a unanimous verdict of not guilty in respect of the two counts of Sexual Assault, and a majority verdict of not guilty in respect of the six counts of Rape.

- [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) (a) and (3) of the Crimes Act No. 44 of 2009 (Crimes Act) and also Section 210 (1) (a) of the Crimes Act.
- [6] Although, in the Statement of Offence in Counts 5 and 7, it has been referred to as Sexual Assault, contrary to Section 210 (1) (b) of the Crimes Act, when reading the Particulars of Offence it is made clear that these are in actual fact counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Therefore, I directed the Assessors accordingly.
- [7] At the outset I directed the Assessors on the six counts of Rape (Counts 1-4, 6 and 8).
- [8] The Assessors were directed that in order to prove the first count of Rape, the prosecution must establish beyond reasonable doubt that;
- (i) The accused;
 - (ii) During the specified time period (in this case between 1 January 2014 and 31 December 2014);
 - (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
 - (iv) Penetrated the complainant's vagina, with his penis; and
 - (v) At the time the complainant was a child under the age of 13 years.
- [9] The Assessors were directed that in order to prove the second count of Rape, the prosecution must establish beyond reasonable doubt that;
- (i) The accused;
 - (ii) During the specified time period (in this case between 1 January 2015 and 31 December 2015);
 - (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
 - (iv) Penetrated the complainant's vagina, with his penis; and
 - (v) At the time the complainant was a child under the age of 13 years.

[10] The Assessors were directed that in order to prove the third count of Rape, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between 1 January 2016 and 31 December 2016);
- (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
- (iv) Penetrated the complainant's vagina, 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 she was consenting.

[11] The Assessors were directed that in order to prove the fourth count of Rape, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between 1 January 2017 and 31 December 2017);
- (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
- (iv) Penetrated the complainant's vagina, 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 she was consenting.

[12] The Assessors were further directed that in order to prove the sixth count of Rape, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified time period (in this case between 1 January 2018 and 21 October 2018);
- (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
- (iv) Penetrated the complainant's vagina, 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 she was consenting.

[13] The Assessors were further directed that in order to prove the eighth count of Rape, the prosecution must establish beyond reasonable doubt that:

- (i) The accused;
- (ii) On the specified day (in this instance the 22 October 2018);
- (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
- (iv) Penetrated the complainant's vagina, 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 she was consenting.

[14] Thereafter, I directed the Assessors on the two counts of Sexual Assault (Counts 5 and 7).

[15] Accordingly, the Assessors were directed that in order for the prosecution to prove the fifth count of Sexual Assault, they must establish beyond any reasonable doubt that:

- (i) The accused;
- (ii) During the specified time period (in this case between 1 January 2017 and 31 December 2017);
- (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;
- (iv) Unlawfully and indecently assaulted the complainant, by fondling her breasts.

[16] Similarly, the Assessors were directed that in order for the prosecution to prove the seventh count of Sexual Assault, they must establish beyond any reasonable doubt that:

- (i) The accused;
- (ii) On the specified day (in this instance the 22 October 2018);
- (iii) At the Manoca Squatter Settlement, Nausori, in the Eastern Division;

(iv) Unlawfully and indecently assaulted the complainant, by fondling her breast.

[17] Each of the above individual elements were further elaborated upon in my summing up in respect of the eight counts.

[18] I also explained to the Assessors as to what was meant by representative counts. I informed them that the representative counts of Rape (Counts 1-4 and 6) and Sexual Assault (Count 5) against the accused are based on an act or series of acts done during the specified time periods as stated in the respective counts. Such charges are described generally as a representative count in legal terminology. The prosecution is expected to prove just one incident of Rape and Sexual Assault, which falls within the period stipulated in the said counts. They need not prove a continuous or a series of incidents of Rape and Sexual Assault in support of a representative count.

[19] In support of their case, the prosecution called the complainant, SSN, her cousin brother, Rajwansh Nikhil Singh, her aunt Sashi Lata and Medical Officer, Dr. Nikotimo Bakani. The prosecution also tendered as Prosecution Exhibit **PE1** the Medical Examination Report of the complainant.

[20] Since the accused was not present in Court during these proceedings it is assumed that the accused is exercising his right to remain silent. During the cross examination of the complainant, the defence moved to tender to Court a rough sketch of the house where the alleged incidents took place as Defence Exhibit **DE1**.

[21] 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 "*Agreed Facts*" without placing necessary evidence to prove them:

1. That the complainant in this matter is **SSN**.
2. That the accused in this matter is **SANJEET SINGH**.
3. That **SANJEET SINGH** and the complainant resided at Manoca Settlement, Nausori at the time of the alleged offences.
4. That **SANJEET SINGH** is related to **SSN**, whereby he is her step-father.
5. That the complainant has been under the accused person's care for the last 13 years.

6. That at the time of the alleged offence in 2014, the complainant was 10 years old up till 10th March 2014.
7. That the accused was 40 years old at the time of the alleged offence in 2014.
8. That the Dr. Elvira Ongbit's credentials (as per attachment) are not in dispute.
9. That the accused was arrested and interviewed under caution on the 8th of May 2019.

The following document is tendered by consent:

Birth Certificate of SSN.

- [22] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as "*Agreed Facts*" without placing necessary evidence to prove them, they must therefore, treat the above facts as proved beyond reasonable doubt.
- [23] Based on the said agreed facts the identification of Sanjeet Singh as the accused is not disputed. He is also the step father of the complainant. It is also agreed that the accused and the complainant resided at Manoca Settlement, Nausori at the time of the alleged offences.
- [24] Furthermore, since the birth certificate of the complainant is tendered by consent, her date of birth (10 March 2003) would not be in dispute. Accordingly, the fact that the complainant was a child under the age of 13 years during the period 1 January 2014 and 31 December 2014 (Count 1) and 1 January 2015 and 31 December 2015 (Count 2) would not be in dispute.
- [25] However, the prosecution must prove all the remaining elements of the respective offences beyond reasonable doubt.
- [26] I have summarized the evidence of all the prosecution witnesses in my summing up.
- [27] The complainant clearly testified to the incidents of Rape and Sexual Assault that the accused had perpetrated on her, over a prolonged period of time, commencing from on or about 1 January 2014, up until 22 October 2018. This is a period of over 4 and a half years.
- [28] The accused (through the suggestions made by his counsel during cross examination) totally denies all the allegations against him. He totally denies that he penetrated the complainant's vagina with his penis as set out in the Amended Information. He also

denies that he unlawfully and indecently fondled with the complainant's breasts as he is charged in Counts 5 and 7.

- [29] It was suggested by the defence that after the complainant's cousin Rajwansh had arrived at their house in 2018 that she and Rajwansh were having an affair, and also that she and Rajwansh were having sexual intercourse whilst Rajwansh was staying in the house during that period. The complainant categorically denied the suggestions.
- [30] It was further suggested to the complainant that she was making false allegations against the accused because she did not want Rajwansh to get into trouble with the Police and to save him. The complainant denied this suggestion and said that she did not make any false allegations against the accused.
- [31] In my opinion, the defence version cannot be accepted.
- [32] It must be noted that Rajwansh arrived at the accused's house only around September 2018. This has been established in evidence. On or about 23 October 2018, the said Rajwansh had witnessed for himself how the accused was trying to force himself on the complainant. The matter was reported to the police only thereafter.
- [33] The complainant testified as to the reasons why she did not report the matter earlier to anybody. The accused had threatened that if she told anyone he will kill both her and her mother. The complainant said that on one occasion the accused had threatened her as follows:

"I did not say anything because he told me that if you will tell this to anyone, then I will kill your mother and I will let you stay with me or else he will kill both of us and go to jail. And he also used to say that if you will tell this to anyone, no one will believe you."

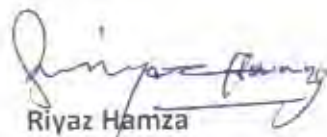
- [34] Therefore, it is my considered opinion the complainant's evidence can be accepted as truthful, credible and reliable evidence. There was absolutely no reason for her to make up this story against the accused, who is her step-father.
- [35] For all the aforesaid reasons, I find that the unanimous opinion of the Assessors in finding the accused not guilty of the Sexual Assault charges and the majority decision finding the accused not guilty of the Rape charges is perverse and not justified. Therefore, the said opinions of the Assessors is rejected.

[36] 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 six counts of Rape and two counts of Sexual Assault with which the accused is charged.

[37] In the circumstances, I find the accused guilty of the six counts of Rape and two counts of Sexual Assault as charged.

[38] Accordingly, I convict the accused of the six counts of Rape and two counts of Sexual Assault as charged.




Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT SUVA

Dated this 31st Day of July 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.

Solicitors for the Accused : Office of the Legal Aid Commission, Suva.