

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 88 OF 2016

BETWEEN : **STATE**

AND : **ARUN KUMAR**

Counsel : *Ms. P. Lata for the State*
Mr. I. Khan with Mr. T. Kaloulasulasu for the Accused

Hearing on : *14th & 15th of September 2020*

Summing up on : *17th of September 2020*

Judgment on : *29th of September 2020*

JUDGMENT

(The name of the alleged victim is suppressed and will be referred to as the complainant or K.R)

1. The accused, Arun Kumar is charged with 2 counts of Rape, alleged as detailed below to have committed on K.R. who is in fact his step-daughter, but said to have considered by him as his real daughter.
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) (b) and (3) of the Crimes Act of 2009.

Particulars of Offence

Arun Kumar, on the 23rd day of April 2016 at Nadi, in the Western Division, penetrated the vagina of K.R., a child under the age of 13 years, with his fingers.

COUNT 2

Statement of Offence

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

Particulars of Offence

Arun Kumar, on the 23rd day of April 2016 at Nadi, in the Western Division, penetrated the vagina of K.R., a child under the age of 13 years, with a pen.

3. The accused pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant K.R, her mother and Dr. Toyin Jenko gave evidence for the prosecution while the accused gave evidence and called a witness Mr. Munesh Reddy, 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 to the alleged two 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, K.R. 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. Before analyzing the evidence of the PW1, I will consider the evidence of the Dr. Jenyo. He confirms that PW1 has recent injuries in her vagina. It is evident that information to the Dr. is provided by the mother, PW2. It is suggested from PW3, if the information given by the PW2, is wrong, he would have come to a wrong conclusion. The PW3

denies such and stated that his conclusions were based on his findings of examining the patient.

8. Further, the above contention has few flaws. It should be noted that PW2 was never suggested that she gave wrong information to the doctor. Though it is suggested by the defense through others, that the PW2 framed the accused in order to hide her relationship with a neighbor, the PW2 was never directly confronted with such proposal. Having observed all the witnesses and their demeanor, I am satisfied that the prosecution version is acceptable and they have proved their stance on this issue satisfactorily. Therefore, I am convinced beyond reasonable doubt that PW1 has had suffered recent injuries in her vaginal region by the date of her examination by the doctor.
9. The ultimate question is who committed those injuries on her. In considering this issue, it is the word of the PW1 against the word of the Accused. I am very much mindful that the accused bears no burden of proof. Even if he has lied, it should not be considered in order to strengthen the prosecution case.
10. When considered the evidence of the PW1, K.R, other than a few minor inconsistencies, there are no major inconsistencies or contradictions *per-se* or *inter-se*. The evidence of the PW1 is supported by the evidence of the PW2 and PW3. The PW1's evidence was convincing enough and she has not lied. It is not very material whether the act was committed at the back seat or the front passenger seat of the car, which was never verified from the PW1. The other issues raised were in regards to the PW1 sitting on the floor and having her breakfast and whether she was taken to the bedroom or the washroom by the PW2. These are irrelevant to the question in issue. The findings of the PW3 is in conformity of the information given by the PW2 as related to her by the PW1. Having scrutinized the evidence of the PW1 and having observed her demeanor carefully, I am convinced that the evidence of the PW1 is acceptable and reliable. Therefore, in my view the prosecution has proved their version beyond reasonable doubt.
11. Now, I will consider whether the defence managed to create a reasonable doubt in the prosecution case. The evidence offered by the accused is much inconsistent with the evidence of his own witness, Mr. Munesh Reddy. The reliability of the accused's evidence is much limited. His explanations of the inconsistencies are non-convincing. Therefore, I am certain that the accused has failed to create a reasonable doubt in the prosecution case.
12. In my view, the prosecution has proved their case beyond reasonable doubt and assessors were wrong in finding the accused 'not guilty'. I am surprised by their opinion,

when the prosecution has successfully proved their case. Therefore, with regret I am compelled to disagree with the unanimous opinion of the assessors. I overturn the opinion of the assessors and find the accused guilty of the alleged two counts of rape.

13. I convict the accused of alleged two counts of Rape.

14. This is the Judgment of the Court.




Chamath S. Mōrais
JUDGE

Solicitors for the State : *Office of the Director of Public Prosecutions*
Solicitors for the Accused : *Messrs. I. Khan & Associates, Lautoka*