

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 60 OF 2017

BETWEEN : **STATE**

AND : **SATISH CHAND**

Counsel : *Mr. A. Singh for the State*
The Accused Appeared in Person

Hearing on : *05th – 06th of October 2020*
Summing up on : *09th of October 2020*
Judgment on : *16th of October 2020*

JUDGMENT

(The name of the alleged victim is suppressed and will be referred to as the complainant, PW1 or S.D)

1. The accused, Satish Chand is charged with a count of Rape and a count of sexual Assault, alleged as detailed below to have committed on S.D who is the daughter of her neighbor/cousin sister.
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 2009.

Particulars of Offence

Satish Chand, on the 27th of February 2017 at Lautoka, in the Western Division, penetrated the vagina of S.D, a 10 year old, girl with his finger.

COUNT 2

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) and (2) of the Crimes Act 2009.

Particulars of Offence

Satish Chand, on the 27th of February 2017 at Lautoka, in the Western Division, unlawfully and indecently assaulted S.D by kissing her neck and causing a love bite.

3. The accused pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant S.D, her mother, Susan Radhika Naidu, the manager of the settlement and Dr. Sudhiksha Singh, who examined the complainant at the hospital gave evidence for the prosecution while the accused gave evidence and called a witness Mr. Atish Chand, 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 guilty to the alleged count of Rape and Sexual Assault.
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, S.D. 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. Therefore, having that in mind, I will be extra-careful in considering the evidence of the PW1, together with the demeanor shown in giving her evidence.

Analysis

7. Before analyzing the evidence of the PW1, I will consider the evidence of the Dr. Sudhiksha Singh. This evidence goes unchallenged by the accused. She confirms that PW1's hymen was not intact and such injury could have caused by an insertion of a finger. The injury on the neck was a recent one caused within 24 hours, by the time she was examined on the 27th of February at 5.00pm. The history given was compatible with the findings. It is evident that PW1 was examined in the presence of her mother, the PW2.
8. When analyzing the evidence of the PW1, the evidence of the incident itself is not challenged or cross-examined upon by the accused. It explained by her how the accused came behind, held her and inserted his finger to her vagina and kissed her on the neck, making a love bite. However he somewhat challenges, accompanying the PW1 to her house. The PW1 stands by her version of events and the accused fails to create any reasonable doubt in the prosecution version.
9. The evidence of the PW2 and the PW3, confirms the PW1's evidence on all relevant points. The PW3 was a neutral person. She has helped the accused and his family on many times and issues. Even the PW2 was having a very good relationship with the accused by the time of the alleged incident. Though the accused state in his evidence that he has scolded the PW2 in the previous week, it was never suggested from the PW2, of any such.
10. The accused further suggests that the PW2 and her family has framed him over a rivalry in the music industry. It is suggested that due to the said rivalry, the PW1 was coached when giving evidence. However, it should be noted that the accused fails to point out any inconsistency between the statement of the PW1 to the police on the day of the alleged incident and her evidence given in court. Therefore that stance of the accused too fails to create any doubt in the prosecution case.
11. The accused provides an alibi. Even assuming it is accepted, it proves only that he was away from 10.30am to 12.00noon on the day of the alleged incident. As for the prosecution version, the alleged incident has taken place around 9.30am. The accused unsuccessfully tries to stretch his alibi to 8.30am. His evidence is contradictory with his own witness's evidence and could not be accepted or relied upon.
12. All in all the prosecution has proved all the necessary elements of the alleged counts, beyond reasonable doubt and the defence has not created any reasonable doubt in the prosecution case. Therefore, the unanimous opinion of the assessors is correct and they

had no other option than opining the accused guilty as charged. I agree and concur with the opinion of the assessors and find the accused guilty of the alleged counts of rape and Sexual Assault.

13. I convict the accused of alleged, 1st count of Rape and 2nd count of Sexual Assault.

14. This is the Judgment of the Court.



Chamath S. Morais
JUDGE

Solicitors for the State : *Office of the Director of Public Prosecutions*
Solicitors for the Accused : *The accused appeared in person*