

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 175 OF 2018

STATE

v

SHAHID ALI

Counsel : Ms. S. Prakash for State
Mr. S. Heritage instructed by Iqbal Khan and Associates for
Defence

Dates of Hearing: 15 - 18 October 2024

Date of Judgment: 21 October 2024

(The name of the Complainant is suppressed. She is referred to as PK)

JUDGMENT

1. The Accused is charged with one count of Rape and one count of Assault with Intent to Commit Rape. The information reads as follows:

Count One

Statement of Offence

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

Particulars of the Offence

SHAHID ALI on the 13th day of September 2018, at Sigatoka in the Western Division had carnal knowledge of PK without her consent.

Count Two

Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to Section 209 of the Crimes Act 2009.

Particulars of Offence

SHAHID ALI on 13th day of September 2018 at Sigatoka, in the Western Division assaulted PK with intent to commit rape.

2. The Accused pleaded not guilty to both charges. At the ensuing trial, the Prosecution presented the evidence of the Complainant and two other witnesses.
3. At the end of the Prosecution's case, the Court found sufficient evidence to put the Accused to his defence. Upon being explained the rights in his defence, the Accused exercised his right to give evidence under oath.
4. The Counsel from both sides tendered written submissions. Having considered the evidence presented at the trial and the Counsel's submissions, I now pronounce my judgment as follows.
5. The Prosecution bears the burden of proving each offence's elements. That burden must be discharged beyond reasonable doubt, and it never shifts to the Accused at any stage of the trial. The presumption of innocence in favour of the Accused will prevail until the charge is proved beyond reasonable doubt. The Accused is under no obligation to prove his innocence or prove anything at all.
6. I shall now summarise the salient parts of evidence led in this trial.

Case for Prosecution

PW1 PK (The Complainant)

7. PK testified that she is now 19 years old and married. She currently resides in Ba with her husband and in-laws. In 2018, she was in Nausori with her mother and younger brother.
8. On 10 September 2018, she was in Matage, Sigatoka, with her mother visiting her uncle Sonu. On the 12th her mother went back to Nausori to pay the house rent leaving her behind. She stayed there until the incident happened on 13 September 2018.
9. On the morning of 13 September 2018, she was at Sonu uncle's house together with her grandmother who came from Australia. On the morning of the 13th, her grandmother went back to Suva and Uncle Sonu also went to town leaving her at Saroj Aji (grandmother)'s place about 100 meters away from Sonu's house. When she was staying at Saroj Aji's place, her aunt's husband Uncle Shahid came with her dad's uncles and aunts, from shopping at around 1.30 p.m. They started drinking beer outside.
10. At around 3 p.m. Uncle Shahid wanted her to accompany him to pick up his wife Ashika, one of her aunties, from school. She got permission from Saroj Aji and went with Shahid in his car. They first went to Uncle Sonu's place to pick up her shoes and phone. She was sitting on the rear passenger side on the left. Shahid drove the car towards town. At the junction, he turned his car to the left when he was supposed to go straight to pick up his wife. She asked Shahid why he was going there. He replied that they were going to have a bath in the sea. She told him that she didn't want to have a bath but to be dropped home. He parked the car near the sea and locked the doors. She insisted that she be dropped home.
11. He told her that nothing would happen and that whatever happens will be between them and not to be told to anybody else. Then, she started yelling out loudly. From the driver's seat, he got hold of her pants and pulled the driver's seat to the back. He started pulling the pants and then he came from the front to the back seat and got hold both of her shoulders. He tried to make her lie down and opened the lock on the left side to make both her legs put outside.

He then pulled her pants down, lifted her right leg and placed it on the armrest. He opened his pants and came on top of her. He took out some saliva from his hand and rubbed it to his penis. While he was still yelling, he put his penis inside her vagina. He slapped on her left face twice and told her to be quiet. But she kept yelling, trying to push him away. He then used one of his hands to cover her mouth so she would not yell. She bit his hand forcing him to take his hand away from her mouth. He started kissing her and used the other hand to remove her top while moving his penis in and out of her vagina. After that, he took his penis out and ejaculated outside by dropping a little bit on top of her vagina. He wiped his penis with a cloth and tried to wipe her. She pushed him away and warned him that she would tell everyone at home of all that he had done to her.

12. He then got out of the car. She tried to pick up her phone to call her mother. He snatched her phone and threw it in front of the passenger seat. He made her wear her pants and wore his pants. He closed the door pressing the lock and came around to sit at the driver's seat. He told her to tie up her hair and warned her not to tell Aunty Ashika or anybody else of whatever had happened. Then he drove the car towards town at full speed.
13. At Volivoli, he had to reduce the speed at the first hump. As soon as he reached the 2nd hump, she opened the door and jumped out of the car. She then started running towards where the iTaukei ladies were selling pawpaw on the roadside. He went and stopped his car a bit further down and started running after her.
14. A Fijian man came in a vehicle, stopped by and inquired what had happened and why she looked like that. She did not want to say anything, as she feared because he too was a man. Shahid came and told her to sit inside the car. She then started crying loudly. Then the Fijian driver asked Shahid what had happened and why she was crying. Shahid told him that she was his girlfriend and that they had an argument /fight with each other. She said 'No' loudly. The Fijian man told Shahid to stay away from her. When Shahid approached her, the Fijian man pushed him. Then Shahid got in the car and went towards town.

15. The Fijian man stopped a taxi going towards Sigatoka town. Two Fijian ladies came out, one of whom was known to that Fijian man. The Fijian man requested the ladies to be with her until he brought the police down. The Fijian ladies, because they were in a rush, offered to take her to the police station.
16. She hugged one Fijian lady tightly and started crying. This Fijian lady made her sit in the taxi and, on the way, asked what had happened. Then she told the Fijian lady that her uncle had kissed her, touched her private part and other places, and he had also raped her. When they reached the police station, one male police officer was there. She was afraid of him as he was also a man. Then a Fijian lady asked for a female police officer so that they could hand her over to police.
17. Then two female officers came and questioned her about what had happened. She said that her uncle had raped her. Then they took her statement and took her to the place where she was raped and then to the hospital. She was admitted to the hospital for one week. She had injuries all over her body, on her breast, and knee. The left side of her face was swollen and there was tenderness on her neck. Her mother came to see her on the same day.
18. She had met her uncle Shahid twice before the incident. The first time was when she came to Sigatoka, after Shahid and Ashika's wedding a few months before the incident. The second meeting was when Shahid and Ashika visited her in Nausori where they stayed a night. When she came to Sigatoka on 10 September 2018, between 10 -13 September 2018, she met Shahid every day during dinner time at Uncle Sonu's house. She pointed out the Accused sitting in Court.
19. Under cross-examination, referring to her statement dated 13 September 2018, PK agreed that she had not told the police that she had taken her grandmother's permission to go with Shahid to pick up Ashika. She agreed the beach is on the right side of the highway. She agreed the beach was a popular picnic spot, but she later denied that people come there for walks and picnics. She agreed the beach was near Uncle Sonu's house.

20. She agreed the car door could have been opened even though it was locked; she tried to escape but she did not know that the door could be opened through the lock. She agreed that she didn't kick or scratch his face. But she was pushing him and biting his hand. She denied that her voice could have been heard at Uncle Sonu's house had she been shouting at the top of her voice. She denied that she could have escaped when Shahid got out to put on his pants. She denied that, given her hands were free, could have called her mum had she been under threat of being raped. She explained that the phone was somewhere on the seat.
21. The police did not take her to Volivoli Village when they took the photographs. She did not attempt to jump until the car came to the 2nd hump because the car was being driven too fast. After jumping, she was just sitting down on the grass. She denied having not told the Fijian ladies that she was raped. She could not recall if she had told the doctor that Shahid took her under a false pretense and by force to Sigatoka and that she was taken to the (sand) dunes, not the beach, and that soon after the alleged rape happened, she wore her clothes and escaped. She denied the injuries were caused when she jumped out of the car. She denied that except for Aunty Ashika, her mother and other aunties hated Shahid because he was a digger operator when Ashika was a schoolteacher.
22. Under re-examination, she admitted that her evidence that the vehicle turned to the left side was incorrect and that, when coming from Sigatoka to Nadi, the beach would be on the right side. She could not escape when Shahid got out of the car because she was lying on the seat, she was weak after being slapped and her thighs spread apart.

PW2 Luisa Tuirewa

23. Luisa testified that on 13 September 2018, she boarded a taxi at the Yadua junction, and, at Waibogi junction, Emali also boarded the same taxi. They went towards (Sigatoka) town when the taxi driver saw an Indian girl sitting on the roadside past Volivoli village. She and Emali got out to see this Indian girl. One man, also from Yadua village by the name Rusi stopped by the roadside and asked if they could assist the Indian girl because she feared men

approaching her. When this girl saw them, she ran towards her and hugged her. The girl was shivering. Rusi told her to wait at the roadside so that he could call the police.

24. This Indian girl appeared scared that something big had happened to her like an accident. She asked what had happened. She said, that whilst she was home, her uncle told her to accompany him to pick up one school student from school and on the way in the vehicle, his uncle started kissing her mouth, neck, and chest area and started touching her private parts. After telling those words, the Indian girl continued to hug her and repeatedly said that his uncle raped her.
25. Because she was in a rush that day, she could not wait for Rusi to bring the police. She asked the taxi driver if they could drop the girl at the police station on the way to town. At the police station, she handed the girl over to a woman police officer. She saw the girl again yesterday when she visited the DPP's office.
26. Under cross-examination, Luisa said she heard the girl say that she was raped although those words are not reflected in the statement. The statement was not read back to her, nor did she read it because she was in a hurry to go to town. If the statement states that it was read back to her, she might have forgotten to mention in her statement that the girl was raped.

PW3 Dr. Ajesh Vigyan Singh

27. In September 2018, doctor Singh was based at Sigatoka Hospital. She examined PK on 13 September 2018 and filled out a Medical Examination Form which he tendered in evidence (PE1). His initial impression of the patient was that she was in a protective, secluded and fearful state as if she had undergone a recent trauma, fearing for her life or her safety. She was in tears.
28. His specific medical findings were that several areas of bruising, particularly on her back, mostly on the left side, and facial and neck area on the left side were noted to be slightly tender on the palpation. He said on the left arm deltoid muscle (the upper third portion of the

left arm) there was superficial bruising, suggestive of restrain marks. These must have been due to forceful restraints on that area causing superficial bruising. Different bruising pattern happens due to various reasons, such as blunt force trauma. The restrain patterns would have bruising and small hemorrhage under the skin whereas a sharp laceration would suggest a cut or something like that. It was more suggestive of a restrained pattern. He also noted superficial bruising on the left base of the neck. On the left breast medial aspect, he noted a 2x2 cm bruise.

29. Upon the perianal area examination and external orifice examination, he found no active bleeding. However, the labial and internal vaginal walls were noted to be edematous (swelling) and erythema (redness). No hymen noted.
30. The doctor's professional opinion as to the cause of these injuries, given the bruising pattern and according to the erythema pattern, could have been caused by blunt force trauma. The pattern particularly showed the restrain pattern on the left upper portion of the body. The fresh injuries in the vaginal area are suggestive of forceful penetration or insertion. Other bruises and tenderness on the rest of the body are restrain marks suggesting that the patient was held back without her consent when she was struggling.
31. After being admitted to Sigatoka Hospital for two days, the patient was transferred to Lautoka Hospital for the patient's well-being because the pattern of injuries and the history of sexual assault was a red flag for medical professionals.
32. Under cross-examination, the doctor agreed that, according to the history provided, one of her uncles, on false pretense, took her by force to Sigatoka. The words 'she was taken to the sand dunes' were his interpretation because the incident had occurred in the Yadua area. He found it more important to address the girl's medical well-being rather than trying to get the exact details of the history. A punch, a slap or being pressed against an object would be examples of blunt force trauma. Tenderness could be caused by falling from a moving vehicle into the ground but not the bruising pattern. If a person falls from a moving vehicle, the area of bruising would be much larger. The doctor ruled out the bruising on the neck, on

the breast, and the side of the arm, having been caused by a fall. The doctor disagreed with the proposition that if there were forceful penetration of a 13-year-old girl by an adult male there would be bleeding. Hymen being present or absent does not indicate a person's sexuality (virginity) because approximately 20 per cent of all females, even those in pre-sexual age do not have hymen. His suggestion of penetration was based on the presence of erythema and oedema and not on the absence of hymen. He excluded possibilities other than penetration.

33. That is the case for Prosecution

Case for Defence

DW 1 Shahid Ali (The Accused)

34. Shahid has been working as a Digger Operator for the past 8 years. He married Ashika Narayan in 2017 and, in 2022 she left home and started living with her parents because of a made-up story. Her parents didn't like his job because he had to go camping away from home. In 2018 he was staying with her in-laws at Mataqe, Sigatoka. His wife Ashika is a schoolteacher at Korotogo Andhara Primary School.
35. On 13 September 2018, when he arrived home at around 1 p.m., his mother-in-law, his wife's cousin, her uncle and aunty had come from Suva. At around 1.30 p.m. he left home to drop his in-laws off to town for shopping. He returned home at around 2.15 p.m. After cleaning his wife's car, (Mazda Excellor 323), he went to pick his wife from school at around 3.45 p.m. As he was coming out, the Complainant asked him if she could go with him to town. He agreed and took her to town in his wife's car. The Complainant first went to bring her shoes and the phone and was seated on the rear seat on the left side.
36. When they reached Volivoli village, he had to pass three humps, and at the last hump, he heard the door open and saw the Complainant jump out of the car. He had no idea why she jumped out of the car. He thought she was leaning on the door and by mistake the door got

open and she fell off the moving car. By the time he saw her, she was rolling on the ground. He crossed the hump and parked the car on the side. As soon as he approached her, she stood up and started to run towards Volivoli village. Her hair was messy, and her clothes were full of grass. He tried to stop her but failed. He saw some Fijian boys coming from the front, and to be on his safe side, he decided to move away and went back to his car. He thought those boys were going to punch him as she was running and crying and if he followed her then they might be thinking that he must have done something wrong to her. From there, he went to pick up his wife from school. He denied all the allegations made by the Complainant in her evidence.

37. He said Naqarai Beach is right beside his house about 100 to 120 meters away and a busy place as people come there for picnics. His relationship with his in-laws was never good. They had a love marriage; all in-laws were against him and her parents never accepted him because he is Muslim whereas Ashika is South Indian.
38. Under cross-examination, Shahid agreed that the relatives of Ashika's side attended his wedding and that he was residing with his in-laws. He stayed there because of his wife since she was teaching there. He agreed that he had friendly conversations with his in-laws when they arrived on 13 September 2018 and when he visited and stayed at the Complainant's house in Nausori. He consumed the meals prepared by his wife and mother-in-law. He later admitted that he was residing with his in-laws because they had accepted him and had no grudges with him. He agreed that the photographs (Nos. 2-4) were of Naqarai beach near his house.

Evaluation / Analysis

39. The case for the Prosecution is that the Accused on a false pretense took the Complainant to Naqarai Beach and, intending to commit rape, he physically assaulted and had carnal knowledge of her.

40. The Prosecution must prove on the first count beyond reasonable doubt that the Accused penetrated the vagina of the Complainant without her consent and that in doing so, he knew or was reckless that she was not consenting. To prove the second count, the Prosecution must establish beyond reasonable doubt that the Accused assaulted the Complainant with the intention to commit rape.
41. The Defence does not deny that the Complainant was 13 years old at the time of the alleged incident and that she is his niece, being related from his wife's side. Therefore, the identity of the Accused is not an issue. He admits having driven the Complainant in his wife's car on the afternoon of 13 September 2018 and that she jumped off the vehicle at Volivoli village when it slowed down at the humps.
42. The Accused completely denies the two allegations. The case turns on who told the truth in Court. However, the overall burden is on the Prosecution to prove the charges beyond reasonable doubt.
43. The Prosecution substantially relies on the Complainant's testimony which it claims to be the truth. To support its assertion, the Prosecution relies on the recent complaint evidence of Luisa Tuirewa and medical evidence of Doctor Singh who medically examined the Complainant soon after the alleged incident.
44. The Defence's challenge to the credibility of the Complainant's evidence is twofold. It says that she is not consistent not only in her evidence but also with the conduct of a genuine rape victim. It was also argued that her evidence is implausible. Let me deal with the Defence's arguments most of them are associated with common myths and stereotypes of rape and rape victims.
45. It was argued that the Complainant had the opportunity to inform her mother (before the alleged rape) that she was under threat of being raped. There is no dispute that she had a phone with her that evening. When the car turned towards the beach, she said she was concerned and questioned the purpose of going there. The Accused indicated he was going

to the beach to have a bath. Although she disliked him going to the beach, it was too early in my opinion for her to assume that she was under threat of being raped. Real such a threat would have been felt by her when the Accused pushed his seat back to come on top of her. By that time, the phone, according to her, was not in her hand but somewhere on the seat. Even if it were, it would not have been possible for her to use a phone when the Accused, in a shocking move, came on top of her.

46. The Complainant tried to use the phone at the first available opportunity when the Accused, after committing the alleged rape, got out of the car to put on his pants. She said the Accused snatched the phone and threw it onto the front seat preventing her from making the call.
47. It was also argued that the Complainant had an opportunity to escape by opening the rear door. Before the alleged rape, the Accused had locked the doors. She said she had no idea how to unlock the door until the Accused himself unlocked it when he came to the back seat. Even if she had known how to unlock it, it would have been futile for her to try to escape, given the car had been parked, as the photographs show, in an isolated area.
48. It is not disputed that she jumped out of the vehicle at Volivoli. She had grabbed the first available opportunity to escape when the car slowed down at the second hump.
49. It was also argued that her voice could have been heard at Uncle Sonu's house had she been shouting at the top of her voice. There is no credible evidence that Sonu's house is somewhere close to the place where the alleged rape occurred. The photographs confirm this place is isolated. Although the State Counsel, by showing the photographs to the Complainant, failed to get her to confirm that they depict the place where the alleged rape occurred, it was Complainant's evidence that she was taken to the place where the rape occurred by the police. The photographs no doubt were taken when the Complainant pointed out that place to police officers.
50. The Accused confirmed that the photographs (Nos. 2-4) were of Naqarai beach. His evidence that Naqarai Beach is right beside his house, about 100 to 120 meters away and that it is a

busy place is not consistent with what the photographs portray. Even if it is a picnic place as he said, it is hardly possible that people will come there for a picnic on a weekday by that time. The Accused had driven a considerable distance from Sonu's house before coming to the beach. Therefore, her evidence that she yelled at the top of her voice to be heard by nobody should be accepted.

51. It was argued that the Complainant failed to complain to the first person she met. The Fijian man Rusi was the first person she met after the incident. She admitted she did not complain to Rusi when he inquired about what had happened and why she looked like that. She explained that she was scared to say anything to him as he, too, was a man (male). At the police station, one male police officer was there. She was afraid of him as he was also a man. Then a Fijian lady asked for a female police officer. Luisa (PW2) confirmed that Rusi sought her support because the Complainant feared the men who approached her. She also confirmed that she had to ask for a female police officer at the police station because the Complainant feared talking to the male policeman.
52. The Prosecution relies on Luisa's evidence to prove that the Complainant made a recent complaint and thus her conduct is consistent with that of a genuine rape victim and to negative her consent. The Complainant's evidence is that she told the Fijian lady whom she met in Volivoli that her uncle had kissed her, touched her private part and other places, and he had also raped her. Luisa happened to be the first female she had met after the incident. Luisa confirmed that she received the complaint from the Complainant that his uncle kissed her mouth, neck, and chest area and started touching her private parts and raped her.
53. The Defence contended that the Complainant had not complained to Luisa of rape because she was never raped. This contention was based on the absence of the word 'rape' in Luisa's statement to police. Luisa was sure that she had heard from the Complainant that she was raped and that she told the police what she heard from the Complainant. I should accept her explanation of why the word rape is not present in her statement. She said that the statement was not read back to her, nor did she read it because she was in a hurry to go to town. She

further said that if the statement states that it was read back to her, she might have forgotten to mention in her statement that the girl was raped.

54. Even if the Court were to accept that the Complainant had not spoken about being raped in her complaint to Luisa, that would not affect the credibility of the Complainant as her complaint contained what is required to be included in a recent complaint in a sexual case.
55. In Senikarawa v State¹ the Court of Appeal set down the correct position of law *vis-a-vis* recent complaint evidence as follows:

[14] Evidence of recent complaint may be adduced to show the consistency of the conduct of the Complainant and to negative consent. Korv White v. R [1998] UKPC 38; [1999] AC 210 requires that both the Complainant and the named person to whom the complaint was made must testify as to the terms of the complaint. If the evidence of recent complaint is admitted then the jury should be directed that such complaint is not evidence of the facts complained of and cannot be regarded as corroboration, but goes to the consistency of the conduct of the Complainant with her evidence given at the trial.

[15] The principle on which the evidence is admitted is to support and enhance the credibility of the Complainant. The jury, in assessing the truth of the Complainant's evidence, may take into account evidence as to the consistency between that evidence and evidence of her contemporaneous complaint. It can be an aid to her credit (Spooner v. R [2004] EWCA Crim. 1320, Eng. Court of Appeal).

[16] Spooner also considered the degree of consistency required for the evidence of recent complaint. Thomas LJ said:

"The decision in each case as to whether it is sufficiently consistent for it to be admissible must depend on the facts. It is not in our judgment necessary that the complaint discloses the ingredients of the offence; it will, however, usually be necessary that the complaint discloses evidence of material and relevant unlawful sexual conduct on the part of the defendant which could support the credibility of the Complainant. It is not, therefore, usually necessary that the complaint describes the full extent of the unlawful sexual conduct alleged by the Complainant in the witness box, provided it is capable of supporting the credibility of the Complainant's evidence given at the trial.

Differences may be accounted for by a variety of matters, but it is for the jury to assess these. For example, in cases of alleged abuse (such as this) by a stepfather or other family member, it would be for the jury to consider whether the difference arises because, as is known to happen on some occasions, the Complainant cannot bring herself to disclose the full extent of the conduct alleged against the defendant at the time of the contemporaneous complaint."

¹ [2006] FJCA 25; (24 March 2006)

56. In Raj v State² the Supreme Court expressed a similar sentiment:

[39] The complaint need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the Complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the Complainant's evidence. The judge should point out inconsistencies. These he referred to in an earlier paragraph.

57. After making the complaint to Luisa, the Complainant told the doctor and the police the full story of what had happened. I accept that the Complainant made a recent complaint which is consistent with the allegation of rape. I am satisfied the Complainant's conduct is consistent with that of a genuine rape victim.
58. The evidence shows that the Complainant was in a distressed condition after the alleged rape. Luisa said the Indian girl appeared scared that something big had happened to her like an accident. Doctor Singh said that she was in a protective, secluded and fearful state as if she had undergone a recent trauma, fearing for her life or her safety and that she was in tears. This conduct is consistent with that of a rape victim.
59. The Defence highlighted so-called inconsistencies in the evidence of the Complainant *vis-a-vis* her previous statements, which they say are material to assess the credibility of the Complainant. I am not convinced. None of them concerns the trial issues and material enough to discredit her version. The Complainant was only 13 years old at the time of the incident, and her statement had been recorded in a question-and-answer form. She may not have given the full details of the incident unless the officer questioned her.
60. The Defence Counsel used the history allegedly provided by the Complainant and recorded by the doctor in the medical report (PE1) to show that the Complainant is not consistent in her evidence. I do not see any material inconsistency there either.
61. Doctor Singh admitted that some parts of the history were based on his own assumptions. As opposed to witness statements made to police, there is a problem when a history provided

² [2014] FJSC 12; (20 August 2014)

by a patient to a doctor is used to mark contradictions mainly for two reasons. Firstly, unlike the statements made to the police, the statements made to a doctor are not adopted by the patient after reading them or being read over and by signing. The present case is a classic example where the doctor had substituted the words 'sand dunes' on the assumption that the alleged incident must have happened there because that is the place where similar types of incidents used to occur in the Yadua area. Secondly, as Dr Singh said, the doctors are not supposed to obtain and record full details of the allegation except for a brief history. In any event, I do not see any material contradictions between what the Complainant is alleged to have told the doctor and her evidence in Court.

62. The Prosecution also relies on the expert opinion of Doctor Singh to prove the consistency of the version of the Complainant. I am satisfied that the medical findings are consistent with the allegations of rape (forceful penetration) and assault albeit they do not implicate the Accused.
63. The Complainant said that the Accused forcefully got hold of both of her shoulders, forcefully spread her legs apart and tried to make her lie down. He slapped her left face twice. He used one of his hands to cover her mouth.
64. The external injuries the doctor had observed in the Complainant's body correlate to what she said in her evidence. The doctor found several areas of bruising, particularly on her back, mostly on the left side of the facial and neck area noted to be slightly tender on the palpation. He said the left arm deltoid muscle had superficial bruising, suggestive of restraint marks. He opined that these injuries must have been due to forceful restraints on that area. He ruled out the possibility of these injuries / medical conditions having been caused when she jumped out of the vehicle.
65. Dr Singh gave reasons for his opinion. Although a tenderness could be caused by a fall from a moving vehicle into the ground, the bruising pattern and the area of bruising do not point to a fall. The doctor ruled out the bruising on the neck, on the breast, and the side of the arm, having been caused by a fall.

66. The medical findings of the perianal area and orifice examination are also constant with forceful sexual intercourse. Although the doctor found no active bleeding, the labial and internal vaginal walls were noted to be edematous (swelling) and erythematous (redness). No hymen was noted, but his opinion on penetration was not based on that but on the presence of erythema and oedema. These observations made him exclude other possibilities and confirm his finding that she was forcefully penetrated.
67. The Defence Counsel, in his written submission has argued that given the small space between the seats, the Accused can't fit within there for him to have sexual intercourse with the Complainant in the manner she described in her evidence. I would disagree with this argument. Before coming on top of her, the Accused had made her lie down and opened the left rear door to make both her legs put outside. Then only he pulled her pants down, lifted her right leg and placed it on the armrest.
68. I observed the demeanour of the Complainant. She was straightforward in her evidence. She answered the questions with confidence and without any hesitation. Her demeanour is consistent with that of a genuine rape victim. I have no reason to reject her evidence.
69. The evidence of the Defence is implausible and is not appealing to me. It appeared that the Accused was trying to save his skin. He attempted to convince this Court that the relationship with his in-laws was not good, suggesting that this allegation was made up. However, it was never put to the Complainant that the allegation was made up or that it was made up because of this alleged animosity. The circumstances under which the complaint was made do not suggest that the allegation was made up.
70. The Accused agreed that the relatives of his wife's side attended his wedding and that he was residing with his in-laws ever since they got married until they parted in 2022. He had stayed with his in-laws almost four years even after this allegation was mounted. He agreed that he had friendly conversations with his in-laws when they arrived on 13 September 2018 and also when he visited and stayed at the Complainant's house in Nausori. He later admitted

that he was residing with his in-laws because they had accepted him and had no grudges with him.

71. He could not explain why the Complainant jumped out of the vehicle and why he escaped without helping his niece (Complainant) when he saw the youth approaching him in Volivoli. He had no reason to fear if he had done no wrong to the Complainant. I am sure he got scared and escaped because he was guilty. There is no reason for her to cry and run away from the Accused if he had done no wrong to her. His evidence that she must have been leaning on the door and by mistake, the door got open, and she must have fallen off the moving car is based on speculation. This proposition was never put to the Complainant. It is not possible that the door would open automatically for her to fall when the car already slowed down at the first hump.
72. For these reasons, I would reject the evidence of the Defence. It failed to create any doubt in the version of events of the Prosecution's case.
73. There is ample evidence that the Accused penetrated the vagina of the Complainant without her consent. He had good reasons to believe, and he knew that the Complainant was not consenting. The elements of Rape are satisfied. I am sure the Accused assaulted the Complainant with the intention of committing rape. The elements of the 2nd count are also satisfied.
74. The Prosecution proved both charges beyond reasonable doubt. I find the Accused guilty on each count. The Accused is convicted accordingly.

21 October 2024



Aruna Aluthge

Judge

Solicitors

Officer of Director of Public Prosecutions for State

Iqbal Khan and Associates for Defence