

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 145 OF 2012

BETWEEN : STATE

AND : SHANEEL SINGH

Counsel : Ms. J. Fatiaki for State
Mr. M. Fesaitu with Ms. N. Sharma for the Accused

Date of Hearing : 9th - 11th of May 2016

Date of Closing Submissions : 11th of May 2016

Date of Summing Up : 13th of May 2016

Date of Judgment : 16th of May 2016

JUDGMENT

1. The Accused person is charged with one count of Abduction of a Person Under 18 years of age with Intent to have Carnal Knowledge, contrary to Section 211 (1) of the Crimes Decree and one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. The particulars of the offence are that;

First Count

"Shaneel Singh on the 20th day of October 2012 at Nadi in the Western Division with intent that Tagilala Vakaloloma being unmarried and being under the age of 18 years, be unlawfully and carnally known by Shaneel Singh took the said Tagilala Vakaloloma out of the possession and against the will of her guardian Kitione Salatogo."

Second Count

"Shaneel Singh on the 21st day of October 2012 at Nadi in the Western Division inserted his penis into the vagina of Tagilala Vakaloloma without her consent."

2. The Accused person pleaded not guilty for the two counts, hence the hearing of this matter was commenced on 9th of May 2016 and concluded on 11th of May 2016. The prosecution called four witnesses to prove the charges against the accused person. The accused person gave evidence on oath for the defence. At the conclusion of the defence's case, the learned counsel for the prosecution made her closing submissions. The learned counsel for the defence then made his closing submissions, which was followed by the summing up.
3. The three assessors returned with a divided verdict, where two of them found the accused person is not guilty for the both counts, while one assessor found him guilty for both counts. The assessors' verdicts were not perverse. It was open for them to reach such conclusion based on the evidence presented during the course of this hearing.
4. Having carefully considered the evidence adduced during the course of the hearing, the respective closing submissions of the parties, the summing up and the verdict of the three assessors, I now proceed to pronounce my judgment as follows.
5. Section 211 (1) of the Crimes Decree states that;

"A person commits a summary offence if he or she, with intent that any unmarried person under the age of 18 years shall be unlawfully and carnally known by any

person (whether such carnal knowledge is intended to be with any particular person or generally), takes or causes to be taken the person out of the possession and against the will of his or her father or mother, guardian or any other person having the lawful care or charge of the person under 18 years”.

6. Accordingly the main elements of the offence of Abduction of a person under 18 years of age with intent to have carnal knowledge are that;
- i) The Accused,
 - ii) Takes or caused to be taken the victim out of the possession and against the will of her guardian,
 - iii) The accused had an intention to take the victim out of the possession and against the will of her guardian,
 - iv) The victim was unmarried and below the age of 18 years,
 - v) Taking away with the intention to have sexual intercourse with the victim.
7. Section 207 (1) and (2) (a) of the Crimes Decree states that;

“Any person who rapes another person commits an indictable offence.

A person rapes another person if-

- a. *the person has carnal knowledge with or of the other person without the other person’s consent,*

8. Accordingly the main elements of the offence of Rape are that;
 - i) The Accused,
 - ii) Penetrated into the vagina of the victim with his penis,
 - iii) The victim did not consent to the accused to penetrate into her vagina with his penis,
 - iv) The Accused knew the complainant was not consenting for him to insert his penis in that manner.
9. The prosecution alleges that the accused on 20th of October 2012, took the victim out of the possession and against the will of her uncle, to have sexual intercourse with her. She was not married and seventeen years old at that time. The accused then took her to Kennedy Motel and had sexual intercourse where he penetrated into her vagina with his penis without her consent.
10. The accused person denies this allegation and stated that he had -no intention to abduct her from the possession of her uncle. He further denied that he raped the victim. The accused contended that it was a consensual sexual intercourse.
11. The accused stated in his evidence that he only came to know about the fact that the family of the victim was looking for her with the police when he was informed by Sam. He then left the house of Vivek with the victim. He took the victim to the house of her uncle. The victim refused to go back to her house. She then agreed to go to the motel when the accused suggested it. The victim in her evidence confirmed that the accused person first took her to her house. However,

she refused to go back. She further stated that she did not answer her mobile phone when her uncle was calling. There is no evidence to establish that the accused person knew that the victim came with him without informing her uncle or against the will of her uncle. He only came to know about it when he was informed by Sam. He then tried to take her back to her house, which she refused. In view of these evidence, it appears that that is a reasonable doubt whether the accused person actually had an intention to take the victim out of the possession and against the will of her uncle.

12. The accused person further stated in his evidence that he never asked the age of the victim. However, she appeared big and had told him that she was working at Denarau. The victim in her evidence stated that she told the accused that she was working at a Massage Parlor at Port Denarau. According to this evidence I find that there is a reasonable cause for the accused person to believe that the victim was not under the age of 18 years old.
13. In view of the reasons discussed above, it is my opinion that the prosecution has failed to prove the guilt of accused person beyond reasonable doubt in respect of the first count as charged in the information.
14. In regard to the second count, the accused person has admitted that he had a sexual intercourse with the victim on the early morning of 21st of October 2012 at the motel room. The prosecution alleges that the victim did not give her consent to the accused person to insert his penis into her vagina. However, the accused person claimed otherwise.

15. The victim in her evidence stated that she let her pants go down when the accused person pulled it on third time. Before that, the accused tried to pull it down twice, but she managed pulled it back. She then stated that she liked it when he inserted his penis into her vagina. Accordingly, it appears that there is a reasonable doubt whether the victim actually gave her consent, though reluctantly, for the accused to insert his penis into her vagina. Under these circumstances, I find that the prosecution has failed to prove that the victim has not given her consent for the accused person to have sexual intercourse with her.
16. Accordingly, I find there is no cogent reason for me to disregard with the majority opinion of the assessors. Hence, I find that the accused person is not guilty for the two counts as charged in the information and acquit him accordingly.
17. Thirty (30) day for the appeal to the Fiji Court of Appeal.



R. D. R. Thushara Rajasinghe

Judge



At Lautoka

16th of May 2016

Solicitors : Office of the Director of Public Prosecutions

Office of Legal Aid Commission