

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 129 OF 2012

STATE

-v-

RAM CHARAN MAHARAJ

Counsel : Ms. L. Latu for the State
Mr. W. Nainima for Accused

Date of Summing Up: 25th August, 2016

Date of Judgment: 29th August, 2016

JUDGMENT

1. The Accused Mr. RAM CHARAN MAHARAJ is charged with the following counts and tried before three assessors.

1ST COUNT

Statement of Offence

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

Particulars of Offence

RAM CHARAN MAHARAJ, on the 3rd day of October 2012 at Ba in the Western Division, inserted his penis into the vagina of VIRISILA MARAMA without her consent.

2ND COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

RAM CHARAN MAHARAJ on the 9th day of October 2012 at Ba in the Western Division, unlawfully and indecently assaulted a girl namely **VIRISILA MARAMA** by touching her body whilst she slept.

2. Assessors unanimously found the Accused 'not guilty' of both charges. Having disagreed with Assessor's opinion, I proceed to give my reasons as follows.
3. Prosecution adduced evidence only of the Complainant. At the end of the Prosecution case, Accused elected to exercise his right to silence.
4. There is no dispute as to the identity of the Accused.
5. The Prosecution based its case entirely on the evidence of the Complainant. Prosecution says that, on the 3rd of October 2012, the Accused forcefully penetrated the Complainant with his penis and, on the 9th of October, 2012, he unlawfully touched Complainant's body whilst she was sleeping in the Rakiraki house. Accused denies the charges and takes up the position that the allegation was made up by the Complainant because of the hatred she had towards him for marrying her biological mother.
6. Having carefully analysed the evidence led in the trial I have come to the conclusion that the Complainant is an honest and trustworthy witness and the evidence she gave in Court is truthful.
7. Complainant was 17 years old at the time of alleged incidents. She is from a broken family. Her mother married the Accused after the first marriage with Complainant's father had come to an end. Complainant did not like her mother's marriage with the Accused. She hated the Accused. She was living with her

grandparents in Rakiraki while her mother and step father lived with their children in Ba.

8. In October, 2012, Complainant had come to visit her mother in Ba. On the 3rd of October, 2012, her mother and step father had a fight. As a result of which Complainant was chased away from house by her mother.
9. The reason for the fight and why she was chased away was not clearly transpired in evidence. Version of the defence was that Complainant was chased away because her mother had noticed love bites on her and her mother did not want Complainant using the house as a meeting place with a 'boy'. Complainant flatly denied the version of the Defence.
10. Under re-examination, Complainant said her mother chased her away 'because she was suspecting us'. State Counsel's attempt to get a further clarification failed when Complainant started crying in the witness box. From what I gathered from Complainant's evidence, I am sure Complainant was chased away because her mother suspected of a relationship between the Accused and the Complainant.
11. When the Complainant was chased away by her mother, she wanted to get back home (in Rakiraki). She packed up the bag and went to have a wash. Then she came back to the room to get her bag. But the bag had gone missing. Complainant's step sister told her that the bag was taken by the Accused. Accused did not want her to leave the house. He asked her not to take the bag. Then she went to the nearby farm house with her step sister in search of the bag. Accused also came to the farm house in the evening. Upon his arrival, Complainant inquired about the bag. Accused did not tell the place where the bag was hidden. Complainant then wanted to come back to the main house to get the bag. But Accused discouraged her. Accused said if she goes back, her mother will do something to her. Then she decided to remain in the farm house.
12. It is obvious that Complainant did not want to stay in the farm house that night. She had to stay there because she had no other option. Accused took every effort to stop her from leaving the farm house. Without the bag she could not go to

Rakiraki. She could not go to the main house because she feared that her mother will do something to her. Now the Complainant was placed in a vulnerable situation in the farm house. It is under these circumstances the Complainant says that she was raped.

13. There is evidence to show that Complainant did not like the Accused and she even hated him. According to a suggestion put by the Defence Counsel, Accused had even politely inquired from the Complainant why she had so much hatred for him. If she really hated him and if he knew that she had so much hatred for him I can't understand why he wanted to stop her from leaving the house. The inference that can be drawn from the circumstances is that he wanted to exploit the vulnerable situation Complainant was put in that night.
14. Contention of the Defence is that the fact that Complainant did not report what had happened to her as soon as possible makes it less likely that the complaint she eventually made to police was true.
15. Alleged rape incident occurred on the 3rd of October, 2012. This incident had been reported to police only when the Complainant's mother suspected of the second incident allegedly occurred on the 9th of October, 2012.
16. In my opinion, her belated complaint does not support the version of the Defence that complaint she eventually made to police on the 11th of October, 2102 is not true. Complainant has given an acceptable and legitimate explanation why she did not complain at the first available opportunity. She said she was threatened with a knife and threatened to chop them altogether if the matter was reported to her mother. She was only 17 years old at that time. Apart from the threat, being the step father, Accused wielded a considerable authority over the Complainant which would have effectively prevented her from complaining.
17. Victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others would react with shame, or fear or shock or confusion, do not complain or go to Police or any

other authority for some time. It takes a while for self confidence to re-assert itself.

18. Complainant admitted that, on the 9th October, 2012, when her mother woke up in the morning she (mother) had assumed that something had happened when she saw 'love bites' on the Complainant and saw her sleeping in the sitting room with the drunk Accused. Complainant also admitted that when her mother inquired if anything had happened, she had replied in the negative.
19. It is quite natural for her to refrain from complaining to her mother in the presence of the Accused who had threatened a few days ago to chop them altogether.
20. Complainant also admitted that the alleged incidents were reported to police only after her mother, having suspected that something had happened, had reported it to her grandfather. Upon receiving the information, her grandfather had gone to the police station. Then only the October 3rd rape incident came to light.
21. Complainant said that she reported to police everything her step father had done to her. Defence Counsel took up the position that Complainant's version is not consistent in that some of the things she told in Court in evidence were not there in her statement made to police on the 11th October, 2012.
22. Complainant had not told the police that she was threatened by the Accused 'with a knife'. There is also no mention about her legs and hands being tied by the Accused. I do not consider them to be material omissions. The environment at the police station would not have been a friendly one to a rape victim. Police interviewer would not have been asking questions the way a Counsel would cross examine a witness in Court. Therefore, those omissions cannot be considered as material contradictions sufficient enough to reject the Complainant's evidence. I find that Complainant's statement to police is not inconsistent with her evidence in Court.
23. Defence Counsel argued that if the Complainant was really raped she could have yelled and raised alarm since her step sister was also sleeping in the same small


farm house. Complainant's explanation was that she did shout once and then her mouth was blocked and threatened with a knife.

24. Defence Counsel's argument is based upon an assumption. Courts can't assume that there is a classic or typical response to an unwelcome demand for sexual intercourse. The experience of this Court is that people who are being subjected to nonconsensual sexual activity are likely to respond in variety of different ways.
25. Defence took up the position that the whole story was made up by the Complainant because she hated the Accused. Complainant did not hide the fact that she really hated the Accused. However, she completely denied having made up a story.
26. I can't see any valid or logical basis for the contention of the Defence. If she wanted to make up a story to put the Accused in trouble she could have gone to the police station on her own and made a complaint without waiting for her mother and grandfather to act on her behalf. It is not the case for Defence that Complainant's mother or grandfather had fabricated this story. Complainant was called upon to give a statement only after her grandfather had gone to police. Complainant was a reluctant witness. It took some time for her to open up with the story of rape. If she made up this story she could have relayed the story in a more comfortable manner.
27. I watched the Complainant giving evidence in court. She was sometimes crying. At times, she took long pauses to answer the questions. Complainant's obvious reluctance to give evidence in Court does not compel me to believe that she is an untrustworthy witness. Her conduct and demeanor are rather consistent with her honesty.
28. It comes as no surprise to me, when the Prosecution has failed to call the doctor who examined the Complainant and in the absence of evidence supporting Complainant's version either by way of recent complaint or distress evidence, that assessors coming to the conclusion that they have arrived in this case. However, I

have no reason to reject the evidence given by the Complainant which needed no corroboration. Therefore, I accept the version of the Prosecution.

29. I am satisfied that all the elements of the offence of Rape and Indecent Assault are made out. Accused forcefully removed her panty, tied her legs and hands and 'did his penis on her'. He forcefully 'did his penis into her vagina'. He forced her. She did not give her consent to what he did to her. She did not like what he did. She shouted, but her mouth was blocked. All the elements of the offence of Rape are made out.
30. Accused touched the Complainant's body whilst she was sleeping in night. That is an indecent assault.
31. Prosecution proved the case beyond reasonable doubt.
32. I reject the unanimous opinion of the assessors and find the Accused guilty on both counts. I convict the Accused on both counts accordingly.




Aruna Aluthge
Judge

AT LAUTOKA

29th August, 2016

**Solicitors: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused**