

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 179 OF 2013

BETWEEN : STATE

AND : MUNENDRA

Counsel : Ms Latu for State  
Mrs. Baleilevuka for Accused

Date of Hearing : 12th October 2016

Date of Closing Submissions: 13th October 2016

Date of Summing Up : 14th October 2016

Date of Judgment : 21st of October 2016

JUDGEMENT

1. The accused is being charged with one count of Criminal Trespass, contrary to Section 387 (1) (a) of the Crimes Decree, one count of Common Assault, contrary to Section 274 (1) of the Crimes Decree, one count of Rape, contrary to Section 207 (1) and (2) (b) 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 offences are that;

*First Count,*

*Munendra on the 7th of July 2010 at Tavua in the Western Division entered into the property of Roshni Mudaliar with intent to commit an offence on the said Roshni Mudaliar,*

*Second Count,*

*Munendra, on the 7th of July 2010 at Tavua in the Western Division unlawfully assaulted Roshni Mudaliar on her right arm,*

*Third Count,*

*Munendra, on the 7th of July 2010 at Tavua in the Western Division penetrated the vagina of Roshni Mudaliar with his finger without the consent of the said Roshni Mudaliar,*

*Fourth Count,*

*Munendra, on the 7th of July 2010 at Tavua in the Western Division penetrated the vagina of Roshni Mudaliar with his penis without the consent of the said Roshni Mudaliar,*

2. The accused pleaded not guilty for the above four counts, hence the matter proceeded to hearing. The hearing commenced on the 12th of October 2016 and concluded on the 13th of October 2013. The prosecution adduced the evidence of the victim and her husband. The accused neither gave evidence nor call any other witness for his defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing submissions, which was followed by my summing up.
3. The three assessors returned with unanimous opinion of guilty for the all four counts. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having carefully considered the evidence adduced by the prosecution, the respective closing submissions of the parties and the opinion of the assessors, I now proceed to pronounce my judgement as follows.

5. The prosecution alleges that the accused entered into the house of the victim in the night of the 7th of July 2010 with intent to commit an offence. He then punched on her arms and dragged her inside the bed room. He then inserted his finger into her vagina without her consent and then inserted his penis into her vagina without her consent and had sexual intercourse with her.
6. According to the evidence adduced by the victim, the accused was her immediate neighbour and known to each other. The accused had called her on her phone at around 10 p.m. informing her to close her gate. However, she did not go out to check the gate and still kept on watching television. In a while, she went out to feed the dog and still did not concern about the gate. While she was feeding the dog, she saw the accused was walking into the compound through the gate. He straight away went into the kitchen.
7. Though he was her immediate neighbour, he has never came to her house at such a time in the night. Her husband has gone for work at the time. However, she did not inquire the accused why was he coming into her compound, when she saw him entering in through the gate. The victim in her evidence explained that the accused was about five to seven meters away from her when he came in and that was the reason she did not asked him. Actually seven to five meter is not a distance, where a person could not orally communicate with another. She can clearly see the gate from the place where she was feeding the dog. Hence, I do not find the explanation given by the victim is probable.
8. The victim stated that she did not run away or shout for help because her daughter was sleeping inside the room. Her daughter was nine years old and the son was eleven years old in the year 2010. Apart from the punch he gave on her shoulder, there is no clear evidence of any form of violent or aggressive conduct of the accused. The victim stated that the accused kissed her on her mouth and then dragged her into her bed room. However, she did not specifically elaborate the manner of dragging her in to the bedroom. No evidence were presented about the location of the room where the children slept in that night and the room in which this alleged incident took place.

9. If the accused is the immediate neighbour of the victim and known her for few years, there was a great probability that he knew the family members of the victim, about their ages and their movements. If he stormed into her house in order to commit this crime when her husband had gone for work, he must have undoubtedly aware of the presence of two young children in the house. Under such circumstances, would it possible that the alleged perpetrator took the liberty to visit the bathroom and had a shower or washed his body at the place where he allegedly committed a very serious crime. There is no evidence about the location of the bathroom that he went in. However, the victim said that she was able to clearly see him inside the bathroom from the kitchen. According to the victim, the accused was naked when he walked into the bathroom. He left his cloths on the bed. She was still naked when she got up and went to the kitchen. He walked out of the bathroom and was still naked. He then took his cloths and went close to the car of her husband. Again the location of the car was not given in evidence, whether it was parked inside the house or outside. He kept his cloths on the bonnet of the car and got dressed. He then left saying that he will come again on another day.
10. Considering the above discussed reasons together with the lateness of making the complaint, firstly to her husband and then to the police, there is a reasonable doubt about the credibility and reliability of the evidence given by the victim. Hence, it is my opinion that the prosecution has failed to prove that the accused is guilty for these four offences as charged in the information.
11. In view of these reasons, I find there is a cogent reason for me to disagree with the unanimous opinion of guilt given by the three assessors. Accordingly I find that the prosecution has not proven the guilt of the accused for any of the four counts as charged in the information beyond reasonable doubt.

12. In conclusion, I hold the accused person is not guilty for any of the four offences as charged in the information and acquit him accordingly.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.



R. D. R. Thushara Rajasinghe

Judge

At Lautoka

21st October 2016

Solicitors : Office of the Director of Public Prosecutions  
Messrs Iqbal Khan & Associates