

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 200 OF 2015**

**STATE**

**vs**

**SANJEEV SINGH**

**Counsel : Ms S Lodhia and Ms S Navia for the State**

**: Mr S Singh for the Accused**

**Hearing : 24<sup>th</sup> October – 27<sup>th</sup> October 2016**

**Summing Up : 28<sup>th</sup> October 2016**

**Judgment : 1<sup>st</sup> November 2016**

*(Name of complainant is permanently suppressed and will be referred to as A.B.)*

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## **JUDGMENT**

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[1] The accused, **SANJEEV SINGH** is charged for committing Rape, contrary to Section 207(1) and (2)(b) of the Crimes Decree No. 44 of 2009 and also for Indecent Assault, contrary to Section 212 (1) of the Crimes Decree No. 44 of 2009, on A.B., who was 15 years old at the time of the alleged offending.

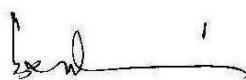
[2] He pleaded not guilty to the two charges and the ensuing trial lasted for 4 days. The complainant, A.B., her mother and the medical officer who examined her have given

evidence for the prosecution while the accused offered evidence and also called a witness.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to the two counts contained in the information.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the 17 year old complainant. She was born on 18<sup>th</sup> June 1999. According to her, the accused is a close friend of her mother and she also knew him for three months. He was a Police officer and was attached to Wainadoi Police post at the relevant time.
- [6] In relation to the count of Rape, the complainant said on 13<sup>th</sup> February 2015, after a grog session at her mother's house, the accused took her phone to charge its battery at the Police post. She had then gone to sleep and at about 3.00 a.m. was woken up by the accused when he pulled her blanket. He asked her to come out of the house to get her phone and also told her if not he will sell it.
- [7] She followed the accused along Ram Sami Road. He then pulled her near a coconut tree and made her lie down on the ground. Then the accused, having stepped on her hands with his boots on, closed her mouth with one hand and touched her vagina with the other. He also touched her breast. He then inserted two fingers into her vagina without her consent. The accused ran out when he heard her mother was calling the complainant.
- [8] During her cross examination, several inconsistencies were highlighted by the accused.
- [9] Her mother said in evidence that after the grog session she too had gone to sleep and she was woken up by the complainant's aunt and uncle in the early hours of 14<sup>th</sup> February 2015 as they have seen the complainant on the road. She met the complainant beside a wooden bridge. She was crying and when asked why, they were told that the accused had touched her vagina after closing her mouth. Then they proceeded to the Police post and the matter was reported.
- [10] During cross examination, she admitted that they complained of Rape as their *"reputation is at stake"* as the complainant's aunt and uncle were also there.
- [11] The accused in his evidence claimed that he was in a relationship with the complainant for the past three months and had consensual sexual intercourse thrice prior to this incident. He thought she was over 16 years of age as she was *"big"* and always moved with village women. He admits touching her breast and *"playing with*

*her vagina*” with her consent on the terrace of a vacant house, where they met few times before. He denied having inserted two fingers into her vagina.

- [12] The assessors have found the evidence of prosecution as unreliable, since they unanimously found the accused not guilty to the two charges. They were directed in the summing up to evaluate the probabilities of the versions of events as presented by the parties. The three assessors have obviously accepted the accused’s evidence that he thought the complainant was over 16 years of age and had consented when the accused touched her breast and “*played*” with her vagina. It was a question of believing whom.
- [13] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I concur with the opinion of the assessors as I am of the view that it is highly improbable to commit the alleged acts attributed to the accused when their relative positions are considered. She said the accused stepped on to her hands when she lay on the ground and held her mouth closed with one hand and touched her vagina, whilst keep on standing.
- [14] Considering the stature and build of the accused if this was the case, it is also reasonable to infer that there would be injuries to her hands and mouth. When the medical officer examined her just 5 hours after the incident, there were none. These factors taken together with her mother’s admission that a report was made as their “*reputation is at stake*” collectively creates a reasonable doubt as to the prosecution’s case.
- [15] The physical appearance of the complainant at the time of the trial, after 20 months since the alleged incident, is supportive of the accused’s claim that he thought she was over 16 years at that time. I therefore, concur with the assessors that the accused thought she was over 16 years of age at the time and consented.
- [16] Therefore, I am satisfied that the evidence of the prosecution is unreliable and therefore is not sufficient to establish the elements of the offences of Rape and Indecent Assault beyond a reasonable doubt.
- [17] Accordingly, I acquit the accused, SANJEEV SINGH on the count of Rape and also on the count of Indecent Assault.
- [18] This is the Judgment of the Court.



ACHALA WENGAPPULI  
JUDGE



**At Suva**

**This 1<sup>st</sup> Day of November 2016**

***Solicitor for the State* : *Office of the Director of Public Prosecution, Suva***  
***Solicitor for the Accused* : *Shelvin Singh Law***