

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 378 of 2016

STATE

V

JOHN ROHIT PAL

Counsel : Ms. Swastika Sharma for the State
Mr. Fillimoni Vosarogo for the Accused

Dates of Trial : 4-7 June 2018

Summing Up : 8 June 2018

Judgment : 11 June 2018

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "MT".

JUDGMENT

[1] The accused, John Rohit Pal, was charged with the following offences:

COUNT ONE

(Representative Count)

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOHN ROHIT PAL between the 1st day of January 2016 and the 29th day of February 2016 at Vatuwaqa, in the Central Division, unlawfully and indecently assaulted **MT**, by touching her breasts.

COUNT TWO

(Representative Count)

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

JOHN ROHIT PAL between the 1st day of January 2016 and the 31st day of December 2016 at Vatuwaqa, in the Central Division, penetrated the vagina of **MT**, a child under the age of 13 years, with his finger.

COUNT THREE

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

JOHN ROHIT PAL between the 1st day of September 2016 and the 30th day of September 2016 at Vatuwaqa, in the Central Division, penetrated the mouth of **MT**, a child under the age of 13 years, with his penis.

- [2] The accused pleaded not guilty to the charges and the ensuing trial was held over 4 days.
- [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 of all three counts.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.

- [5] In support of their case, the prosecution called the complainant (MT), her school teacher, Giria Kapa, and a Medical Officer, Dr. Elvira Ongbit.
- [6] The accused gave evidence in support of his case. He also called witness Molly Tabaka.
- [7] During my summing up I explained to the Assessors the salient provisions of Sections 210 (1) (a) and 207 (1), (2) (b), (2) (c) and (3) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [8] The Assessors were directed that in order to prove the first count of Sexual Assault, the prosecution must establish beyond reasonable doubt that;
- (i) The accused;
 - (ii) During the specified period (in this case between the 1 January 2016 and 29 February 2016);
 - (iii) At Vatuwaqa, in the Central Division;
 - (iv) Unlawfully and indecently assaulted MT, the complainant.
- [9] The Assessors were further directed that in order for the prosecution to prove the second count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) During the specified period (in this case between the 1 January 2016 and 31 December 2016);
 - (iii) At Vatuwaqa, in the Central Division;
 - (iv) Penetrated the complainant's vagina, with his finger; and
 - (v) At the time the complainant was under 13 years of age.
- [10] Similarly, the Assessors were directed that in order for the prosecution to prove the third count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
 - (ii) During the specified period (in this case between the 1 September 2016 and 30 September 2016);
 - (iii) At Vatuwaqa, in the Central Division;

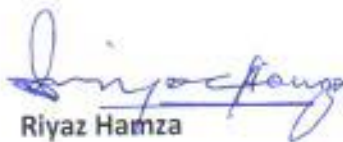
- (iv) Penetrated the mouth of MT with his penis; and
- (v) At the time MT was a child under 13 years of age.

- [11] Each of the above elements were further elaborated upon in my summing up.
- [12] I also explained to the Assessors as to what is meant by a 'Representative Count' as stated in counts one and two.
- [13] I informed the Assessors that in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to prove them. Therefore, that they must treat those facts as proved beyond reasonable doubt. Based on the said agreed facts the identity of the accused is proved as it has been agreed that 'John Rohit Pal is the accused in this matter'. All the other elements of the three offences must be proved by the prosecution beyond reasonable doubt.
- [14] The complainant testified that the accused's house was right opposite to her house. According to her the two houses were just 5 metres apart. She used to go to the accused's house to watch movies. She testified that on a Saturday in the month of January 2016, the accused had touched her breasts inside (under) her clothes. After touching her breasts the accused had touched her private part, inside (under) her clothes. He had used his hands to do this. When asked exactly what part of his hand the complainant said 'his pointer' (index finger). She said his pointer (finger) had gone inside and she felt pain.
- [15] However, she had not told anybody about what the accused did to her because she said she was scared. She also testified that the accused had touched her breasts many times or on many occasions. She also said that the accused had put his finger into her private part three times (or on three occasions). However, she still did not tell anyone about these incidents. If the complainant was to be believed, it means that, despite being sexually abused, she continued to frequent the accused's house.
- [16] In relation to count three, the complainant has testified that she went by herself to accused's house to buy ice block. After she had bought the ice block, the accused had told her to sit beside him. He had then wanted to take her inside his room. The complainant had wanted to go back outside but he had pulled her forcefully. The ice block had fallen

down. The accused had pulled her right into his room. She doesn't remember the date or month this happened, but remembers that it was a Saturday. She described the accused's room as a very large room. However, later in her testimony she admitted that the accused's room was much smaller than what she had originally stated.

- [17] After going into the room, the accused had asked her to lie down on his bed. She did not want to lie down. The accused had then pushed her (onto the bed) to lie down. He took off his pants and laid on top of her and put his private part into her mouth. She had felt scared. She had then pushed him away and ran home.
- [18] However, the complainant had failed to report even this incident to her mother or anyone at home.
- [19] How the incidents came to light was when the complainant informed her Class 5 teacher, Ms. Giria Kapa, about the alleged incidents. As per the testimony of Ms. Kapa this was in the month of October 2016.
- [20] At the time the complainant was medically examined by Dr. Elvira Ongbit, on 15 October 2016, the Doctor has recorded the history as related by complainant as follows: "Patient alleged that a certain Johnny Arun Pal touched her breasts and external genitalia twice in January 2016 and twice in February 2016." It is clear that no mention had been made by the complainant about the accused inserting his penis into her mouth. It is strange that the complainant had failed to relate this incident, which according to the prosecution was the latest incident, and had allegedly taken place in September 2016.
- [21] The accused categorically denies all the allegations against him. He testified that the complainant's father, Sikeli, had an axe to grind, as the accused had terminated Sikeli's employment with him.
- [22] The complainant's first cousin, Molly Tabaka, testified on behalf of the accused. She said in evidence that she had asked the complainant as to what happened and why the Police had come to school to see her. At that time, the complainant had told her that she was being touched by a boy named Jone. The complainant also stated that this had happened at Ana's house. No reference at all had been made to the accused.

- [23] It is the opinion of this Court that the evidence of both the accused and Molly was credible and reliable.
- [24] It is clear that the Assessors too have believed the evidence of the defence as truthful and reliable, as they have unanimously found the accused not guilty on the three charges.
- [25] In my view, the Assessor's opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinion of the Assessors.
- [26] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charges of Sexual Assault and Rape against the accused beyond reasonable doubt.
- [27] In the circumstances, I find the accused not guilty of the charge of Sexual Assault and the two counts of Rape and accordingly I acquit him of all three charges.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Dated this 11th Day of June 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Mamlakah Lawyers, Suva.