

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 73 of 2017**

**STATE**

**V**

**MUNESHWAR REDDY**

**Counsel** : Ms. P. Lata and Ms. R. Uce for the State.  
: Ms. J. Singh [LAC] for the Accused.

**Dates of Hearing** : 1, 2, 3, 4, 5 April, 2018  
**Closing Speeches** : 8 April, 2019  
**Date of Summing Up** : 8 April, 2019  
**Date of Judgment** : 9 April, 2019

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**JUDGMENT**

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1. The Director of Public Prosecutions charged the accused by filing the following information:

**FIRST COUNT**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

*Particulars of Offence*

**MUNESHWAR REDDY**, on the 3<sup>rd</sup> March, 2017 at Nadi in the Western Division, penetrated the vagina of **ANGEL NARAYAN SCHMEKEL**, with his penis, without her consent.

## **SECOND COUNT**

### *Statement of Offence*

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

### *Particulars of Offence*

**MUNESHWAR REDDY**, on the 3<sup>rd</sup> March, 2017 at Nadi in the Western Division, penetrated the mouth of **ANGEL NARAYAN SCHMEKEL**, with his penis, without her consent.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of both counts of rape as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called 4 witnesses and the defence called 3 witnesses including the accused.
5. The complainant Angel Narayan Schmekel informed the court that in August 2015 she came to Fiji with a view to starting up a business in the tourism sector. It was during this visit she met the accused. Both discussed ways of starting the business in which the complainant invested F\$55,000.00 in buying a boat.
6. As days went by, a boyfriend and girlfriend relationship developed between the two. According to the complainant they were a couple, she was getting to know him, since the relationship was a recent one she had not introduced the accused to her family.
7. In December, 2015 her tourist visa expired so she left Fiji leaving her boat in the care of the accused. On 28<sup>th</sup> December, 2016 the complainant came

to Fiji and met the accused, the boyfriend and girlfriend relationship had ended but she supported him.

8. When she came to know the accused was doing business under his name using her boat she was very disturbed. The accused did not take this well he sought time to repay the money invested.
9. There were arguments between the two the accused did not take this break up well, he wanted to meet the complainant and had started threatening her.
10. On 3<sup>rd</sup> March 2017 the accused made numerous phone calls asking her to meet him she refused. The accused told her that he was coming to her home and that he will kill her. The complainant did not take the threat seriously so she did not report him to the police.
11. At around 1pm the accused came to her house in a car, the complainant was alone. The accused came and started tooting the car horn. In order to avoid any dramas in front of her house the complainant went out and told the accused that she did not want to talk to him and he had better leave since her father would come home anytime. Upon hearing this, the accused started to swear at her loudly as a result she was embarrassed.
12. He asked her to sit inside the car and talk like adults and for her not to break up the relationship and to make a decision fast otherwise he will not leave and when her dad comes either he dies or her dad dies. When the complainant left her house she did not wear any shoes, close the house door or take her mobile phone with her.
13. As the complainant sat in the car she saw a dagger near the hand brake of the car, at this time the accused punched her face reversed the car very fast and was taking her somewhere. The accused was angry with her he

had punched her on the right side of her face and said that she will not be able to see her parents again. The complainant was scared begging him to let her go and to stop the car.

14. On the way she tried to open the car door but he pulled the door and continuously punched her. The punches were directed to her face, head, arms, back, stomach and ribs he also slapped her many times. The accused told her he will teach her a lesson by killing her then chop her body into pieces put it in a sack and dump it in the ocean. The accused stopped the car at his house at Nadovi, Sonaisali Road which was about 30 minutes away from her home.
15. At his house the accused dragged the complainant out of the car and took her into the living room of the house. At this time he again started punching and swearing, with all those beatings she was feeling weak. The accused pushed her on the bed in the living room he tied her feet together with some cotton material then started removing her clothes and taking photos of her in her undergarments and when she was fully naked.
16. The complainant begged him with her hands together to let her go but he did not listen and continued laughing. After removing his clothes the accused put his penis into her mouth. The complainant did not consent to what the accused had done, he asked her to suck his penis but she refused and did not cooperate.
17. Thereafter the complainant saw urine dripping from his penis he said it was dirty but she deserved a dirty penis, he then inserted his penis into her vagina, she felt helpless every time she screamed for help the accused tried to suffocate her with a cushion. The accused had penetrated her for about 3 to 4 minutes.

18. There was no one in the house so to get the attention of the neighbours she was screaming and every time she screamed he suffocated her. After much persuasion the accused believed the complainant that she will not report the matter to the police, since she was injured she asked to be taken to the doctor.
19. The accused took the complainant to Dr. Fong's clinic in Nadi Town he told the complainant to sit in the waiting area and not to talk to anyone and wait for him.
20. As soon as she entered the doctor's room she tried to lock the door but could not since there were no keys in the door. The complainant was with the doctor for about 2 minutes she was scared she told the doctor her life was in danger and for him to do her medical straight away.
21. Dr. Fong replied that the complainant had to first report the matter to the police and then go to the Government Hospital for her medical to be done. At this time the accused came into the room. Dr Fong told the accused to leave but he refused saying that the complainant was his partner.
22. Dr. Fong then asked the accused to take her to Nadi Hospital upon hearing this the accused grabbed her arm and took her away from the doctor's clinic. Once out of the doctor's clinic she came across 2 people who were having lunch outside the Restaurant, she cried and begged for their help, but no one came to help her. The accused was assaulting her in front of these people and they were just watching.
23. The complainant was taken to Wailoaloa Beach throughout the journey she was assaulted and sworn at, the accused said that at the beach he will kill her and throw her in the water. At the Wailoaloa Beach the complainant was further assaulted there were people walking past the car she cried for help but nobody seemed to care.

24. The accused threatened her if she reported him to the police nothing would happen to him and that he will kill her and her family. From there she was taken to a Pharmacy in Namaka. The accused purchased pain killers and told her not to see a doctor but to just leave the country and if she reports he will know about it and he will come after her and her family.
25. The accused informed the complainant's mother that the complainant had a headache and had fallen down. The complainant's mother then asked the accused whether he had assaulted her daughter, he denied.
26. The complainant did not tell her mother or report the matter to the police since no one had helped her despite her repeated requests for help and she believed she will not get justice so to save her family she just thought of leaving the country.
27. After the incidents the accused continued to call her and send her text messages apologizing for what he had done. He also sent her pictures he had taken of her on the 3<sup>rd</sup> asking for forgiveness for what he had done.
28. The complainant took photographs of her injuries and screenshots of the messages and pictures sent to her by the accused.
29. On the night of 13<sup>th</sup> March, the accused started to call the complainant seeking forgiveness for what he had done he said if she did not meet him he will be coming to her house on the 14<sup>th</sup>. The complainant told her mother everything the accused had done to her on 3<sup>rd</sup> March and for her not to go to work on the 14<sup>th</sup>.
30. The mother of the complainant Sarojini Devi told the court on 3<sup>rd</sup> March, 2017, the witness was at work after 1.00 pm she received a call from her husband saying that the door of the house was open and the complainant was nowhere to be seen in the house.

31. The witness then called the complainant's mobile phone which was unanswered. The witness then called the accused since he was doing business with the complainant, when the accused answered the phone he told the witness the complainant was sick and he was taking her to Dr. Fong. The witness with her husband went to Dr. Fong's Clinic but the complainant was not there so she called the accused again. The accused answered the call and at this time she heard the complainant's voice saying "Maa" meaning mother, after that the phone was switched off.
32. The witness got scared by this time it was 4.30 pm on a Friday afternoon. She saw the accused had parked his car near Prince Charles Park. The complainant slowly came out of the car as if she was afraid but the accused came to her car first. The witness saw the complainant wearing the clothes she wore at home, was not wearing any footwear and her hair was messed up.
33. When the complainant came near the witness, she saw marks on one side of the complainant's face. At this time the witness asked the accused whether he had assaulted the complainant, the accused denied and said she had fallen.
34. At home the witness noticed the complainant had marks on both sides of her face. The behaviour of the complainant was not normal she was quiet, not replying, appeared scared and not eating properly. On 13<sup>th</sup> March during night time the accused called the complainant but she did not want to talk to him so she gave the phone to the witness.
35. The witness told the accused that the complainant was sick and she did not wish to speak with him. The accused told her to be quiet and that he was coming over to her house. At this time the witness switched off the phone.

36. After this the witness asked the complainant why the accused was behaving like this. At this time the complainant told the witness that she did not fall, the accused had assaulted her, she showed her some photos of her injuries on her phone of what the accused had done to her, she also told the witness that the accused had raped her.
37. When questioned by the witness why she had not informed the police, the complainant replied the accused had threatened her if she reported to the police he will kill her and the whole family and since the Police Officers were his friends they will not do anything to him. The matter was then reported to the police.
38. The third witness was Dr. Shalvin Chand he recalled examining the complainant on 15<sup>th</sup> March, 2017. The doctor's medical findings were:
1. Right lower leg slight bruising still visible ;
  2. Left lower leg bruising slightly visible;
  3. Vagina examination - no vaginal wall laceration.  
- no discharge.  
- no marks or bruises.
39. The final prosecution witness Dr. Raymond Fong a Medical Practitioner, informed the court that in the afternoon of 3<sup>rd</sup> March, 2017 the complainant came into his clinic looking very upset and distressed. When the witness asked her about the problem, the complainant replied that she was assaulted by her boyfriend and she wanted police help. The witness observed that the complainant had her hair covering her face and that she was looking back indicating that she was scared of something.
40. The witness had a conversation with the patient for about two minutes so he was unable to make any assessment of her face in such a short time her



hair covered most of her face. At this time the boyfriend came, the witness told him to go outside while he examined the patient. The boyfriend was very arrogant, he did not wish to leave saying he had the right to stay.

41. The patient refused to talk and the boyfriend refused to leave since the patient needed medical attention the witness suggested they go to the Nadi Hospital. The patient was sitting on a chair the boyfriend took her hand and pulled her. According to the doctor he was very aggressive.
42. The accused informed the court on 3<sup>rd</sup> March, 2017 he was at his home preparing for his boat trip with his customers since he was a boat captain. On this day he also had a date with the complainant at 10.30am, however, he went to pick the complainant late at around 12 noon before leaving for her home both had phone conversation. According to the accused the complainant was very angry with him.
43. He had also purchased another boat that day since the complainant's boat had sunk which was the cause of the problems in their relationship. At the complainant's house he tooted the horn of the car, she came out of the house but wasn't dressed as she used to and was also without any make up. When the complainant came to the gate he asked her whether they were going or not upon seeing the complainant in that dressing the accused started getting angry.
44. The complainant started yelling saying that everything was about the boat and his business nothing about her, the accused was embarrassed he then asked her to come in the car because he did not want to waste his time. Since the gate was locked and she did not have the key the complainant climbed over the fence.
45. In the car the complainant said lets go the accused started driving towards town but the complainant wanted to go to his house. On the way to his

house the complainant started getting physical, there were heated arguments between the two. The complainant started throwing her hands and scratching his face all of a sudden she pushed his face. The complainant wasn't wearing the seat belt so when he retaliated by pushing her, she got hit on the side of her forehead by the seat belt buckle.

46. At home the accused took out cold fizzy drink since he did not have any ice in the fridge when he placed the bottle on the injury the complainant reacted alleging that the accused wanted to spoil her face, wanted to kill her and destroy her face. After this the complainant went to the washroom when she came back the side of her forehead was getting swollen.
47. After coming out of the washroom the complainant became aggressive she wanted to have sex with the accused but he refused saying that she was hurt and to just take it easy.
48. After a while the complainant took off her top she was wearing her sports bra then her pajamas. The accused tried to calm the complainant down but she threatened him *"if you leave me I will destroy you and I know how to destroy you."*
49. At this time he took a photo of the complainant she covered her face. The accused denied penetrating the mouth and the vagina of the complainant with his penis that day.
50. After a while the complainant's mother called, the accused said they were going to town. To cover up for the injuries caused to the complainant the accused took the complainant to Dr. Fong when the accused went into the doctor's room the doctor asked him to leave but the accused refused saying that he was the partner of the patient and therefore he had the right to be present.

51. The doctor told the accused to take the complainant to a lady doctor or to the Nadi Hospital. Upon hearing this, the accused became really angry he asked the doctor why there was any need to take the complainant to another doctor. He then held the complainant's hand and left.
52. From there they went to Wailoaloa Beach as a short cut to the Pharmacy at Martintar he did not assault the complainant at Wailoaloa. After buying the medicine at the Pharmacy the accused and the complainant went to town.
53. At this time, he received a call from his friend Louis Ting a barman at Sonaisali Hilton. The accused then drove to the Nadi Bus Stand and picked Louis at this time the complainant's mother called to say that he is to stop the car where he was so the accused parked the car opposite Prince Charles Park.
54. The parents of the complainant came after about 20 minutes. Louis was sitting on the passenger's seat and the complainant was at the back seat. When her parents came he told the complainant's mother the complainant got hurt in her house her mother said "right" and they went away with the complainant.
55. The second defence witness was Michael Louis Ting, on 3<sup>rd</sup> March, 2017 he was at the Prince Charles Park waiting for the accused at around 3.30pm to 4.30pm when he met the accused with his "so called business partner."
56. The witness approached them by getting into the back seat of the car. According to the witness the complainant was physically okay. The complainant had a conversation with him in the car she had asked him how long he had been selling the business trips. After a while her parents came and she left.

57. The final defence witness Roneel Vishal informed the court that he graduated with a Diploma in Information Systems Management and Software. He has known the accused since 2011 they are friends and also he did some freelance work for the accused.
58. At the request of the accused the witness had created a Facebook page in the name of Utopian Water Sports, on the first day it was the accused and him who had access to the account but on the following day he gave access to the complainant since he had an argument with her regarding the use of that page. He gave her password to the Facebook account on which the page was created.
59. In respect of picture 3 (prosecution exhibit no. 1) the witness stated that the screen shot of the photograph was a messaging option of the Utopian Water Sports. The witness could not say which account was used but it was from Utopian Water Sports a private message between a sender and a receiver. The witness could not confirm if the message was sent from the Facebook page because when he created the page for Utopian Water Sports it only had "contact us" information there was no message option.
60. The witness could not confirm who had sent the message in picture 3 and he also could not confirm if the message was from the Facebook he had created. The accused could not have sent the message from the Facebook page since the page was only for viewing.
61. The message could have been sent from either a messenger or link app since both apps had the same layout of messaging.
62. After considering the evidence adduced by the prosecution and the defence I accept the evidence of all the prosecution witnesses as credible, truthful and reliable. The complainant was able to recall clearly what had

happened to her in 2017. She gave a coherent and honest account of what the accused had done to her on the 3<sup>rd</sup> March, 2017.

63. The complainant was not discredited during vigorous cross examination, considering the circumstances of the complainant and the conduct of the accused I accept the complainant was threatened and assaulted by the accused. She was therefore afraid and traumatized which prevented her from making any complaints to anyone especially about being raped by the accused.
64. When the complainant went to Dr. Fong she did tell the doctor that her life was in danger and she wanted a medical examination to be done immediately. Dr. Fong also confirmed that when the complainant came into his clinic he observed the complainant was very upset and distressed and she had stated that she wanted to report to the police the assault on her by the accused. This witness had only conversed with the complainant for about 2 minutes when the accused entered and demanded to stay with the complainant despite the doctor telling him to leave the room. The doctor also saw the aggression in the accused who then grabbed the complainant and walked away.
65. The fact that the police statement of the complainant did not mention in detail everything she had told the court was not a significant inconsistency in view of her explanation that she told the Police Officer everything that had happened to her. Further she explained that she spent two hours giving her statement and that she was disturbed at the time and worried about her family so she did not read word by word that was written. When she read the statement the important points such as beatings, rape, Dr. Fong and so on were there so she signed it.
66. The mother of the complainant also gave a credible and honest version of what she was told by the complainant. Although she did not tell the police

when giving her police statement that the complainant had told her about being raped by the accused was not a significant inconsistency with her evidence in court since the witness had explained that when she was giving her police statement she was only asked about the repeated phone calls made by the accused and whatever the accused had done at the gate of her house on 14<sup>th</sup> March.

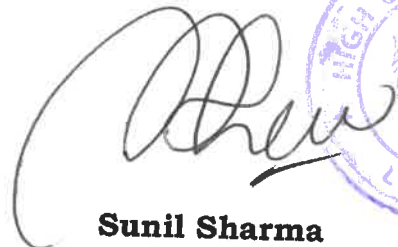

67. According to Sarojini the complainant had told the police about what the accused had done to her in her presence. This witness was also able to withstand cross examination. The inconsistency between her evidence in court and her police statement did not affect the reliability of her evidence. I accept whatever the witness was asked by the Police Officer was narrated by her in her police statement.
68. The late complaint by the complainant to her mother by 10 days also does not affect the reliability of the complainant's evidence. It cannot be ignored that the evidence shows a sense of helplessness that had befallen on the complainant when she was not assisted by people while leaving Dr. Fong's clinic and at the Wailoaloa Beach needless to mention the threats made by the accused.
69. In my judgment the refusal by the complainant to make any complaints to anyone was a natural reaction considering what she had gone through. The late complaint by the complainant to her mother by 10 days was not a substantial delay in the circumstances of the complainant.
70. To say that an absence of recent complaint confirms that the unlawful acts did not happen is an erroneous proposition. On the evidence adduced there was nothing to suggest that the complainant's silence or delay in complaining to her mother or anyone meant that she was not raped.

71. The accused on the other hand did not tell the truth in court his demeanour was such that he was deliberately telling long stories to detract from the main issues in question most of what he told the court was irrelevant and did not comply with the rule in *Brown vs. Dunn*. As his evidence progressed it was obvious to me during cross examination that the accused was not forthright in his answers. He appeared to be a short tempered aggressive person moreover his demeanour in court portrayed a picture of his stubbornness and arrogance.
72. I do not accept the accused had only pushed the complainant in the car which resulted in her getting injured on her forehead. I accept the complainant's account of the violence committed on her by the accused.
73. Furthermore, there was no need for the accused to take the complainant to Wailoaloa Beach from Dr. Fong's surgery although he had opted to take a short cut to Martintar. This was done in my judgment to instill further fear in the complainant since she had complained against the accused to Dr. Fong.
74. I also do not accept that the accused did not send the message which contained his confession to the complainant. I also reject the assertion by the accused that the complainant knew the password of the accused Facebook account and therefore there was a doubt on who had sent the message to the complainant.
75. The second defence witness Roneel Vishal did not support the accused contention because when Roneel had created the Facebook account of Utopian Water Sports there was no messaging option created to the page it was for viewing only. I accept the evidence of the complainant that the accused had sent her the confessional message from link messenger and not from his Facebook account.

76. I accept it was the accused who had sent the picture of the complainant which showed she was in her sports bra and panty with her hands together. The accused agreed in cross examination by State Counsel that he had taken the photo of the complainant while she was wearing her sports bra and panty. In view of the above I also have no doubt in my mind that it was the accused who had sent the complainant's picture to her.
77. The purpose of bringing Michael Louis Ting was not clear on the evidence, however, this witness contradicted the accused since he told the court he had walked from Nadi Bus Stand to Prince Charles Park whereas the accused said he had picked Michael from the Bus Stand. Furthermore, this witness said he sat in the back seat of the car whereas the accused said Michael sat in the front. This witness also contradicted the accused when he said the complainant was fully dressed to go to town when the accused said otherwise.
78. I also reject the evidence of this witness that from the back seat he saw the complainant was physically okay when the accused in his evidence had said that she was visibly injured on the side of her forehead which was swollen.
79. The defence has been of denial that the complainant had fabricated a story against the accused to get even with him for sinking her boat and that she had a motivation to bring about this allegation.
80. This court rejects the defence of denial as implausible and untenable considering the totality of the evidence. The defence has not been able to create any reasonable doubt in the prosecution case.



81. I am satisfied beyond reasonable doubt that the accused on 3<sup>rd</sup> March, 2017 had penetrated the mouth and the vagina of the complainant without her consent.
82. I also accept that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
83. I agree with the unanimous opinion of the assessors that the accused is guilty of both counts of rape as charged.
84. In view of the above, I find the accused guilty of two counts of rape as charged and I convict him accordingly.
85. This is the judgment of the court.

  
  
**Sunil Sharma**  
**Judge**

**At Lautoka**  
9 April, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**  
**Office of the Legal Aid Commission for the Accused.**