

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 141 of 2015

BETWEEN : STATE

AND : IMRAN ALI

Counsel : Mr Seruvatu and Ms Uce For the State
Mr Tunidau and Mr Duanasali For the Accused

Dates of Hearing : 24 and 25 July 2019

Closing Speeches : 26 July 2019

Date of Summing Up : 26 July 2019

Date of Judgment : 21 August 2019

(The complainant's name is suppressed and will be referred to as SN)

JUDGMENT

1. The Accused was indicted for the following counts;

First Count

Representative count

Statement of Offence

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

Particulars of Offence

IMRAN ALI between the 1st day of May, 2014 and 31st day of May, 2014, at Lautoka in the Western Division penetrated the vagina of SN a child under the age of 13 years, with his penis.

Second Count

Representative count

Statement of Offence

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

Particulars of Offence

IMRAN ALI between the 1st day of June, 2014 and 30th day of April, 2015, at Nadi in the Western Division penetrated the vagina of SN a child under the age of 13 years, with his penis.

2. The Accused pleaded not guilty to both counts and the Prosecution called three witnesses to prove the charges against the Accused. After the Prosecution case was closed this Court recorded a finding of not guilty pursuant to Section 231 (1) of the Criminal Procedure Act in respect of the first count as there was no evidence presented by the Prosecution that the Accused committed the offence.
3. Subsequently, the Accused was given his rights as per Section 231 (2) of the Criminal Procedure Act in respect of the second count and he decided to give evidence.

4. At the end of the trial the assessors returned with a unanimous opinion of not guilty in respect of the second count.
5. Having directed myself in accordance with the summing up I will now review the evidence presented by the Prosecution to pronounce my judgment.
6. The complainant is a Class 7 student and initially when she was called to give evidence, she was not responsive and was reluctant to give evidence. Later when she was assisted by a support person the complainant became more responsive. Yet it must be noted that she did not give evidence with much clarity. In any event I have considered the evidence given by the complainant. She said that the Accused inserted his penis into her vagina when they were living in Nasau. She said that it was a morning and her mother was cooking at that time. According to her evidence both the complainant and the Accused were sitting on a bed facing each other when the Accused allegedly inserted his penis into her vagina. The Prosecution clearly asked the complainant about her position when the alleged incident took place. The complainant reiterated that they were sitting on the bed facing each other when the Accused inserted his penis into her vagina. Then her mother had called her and she had gone to have a shower.
7. According to her evidence the Accused had allegedly done the same thing more than two times after the first incident. She said although she wanted to tell her mother about it, she could not tell her. The complainant said that only after they left the Accused's house, she informed her grandmother about the incident. The complainant did not say that she relayed the incident to anyone else.

8. Under cross-examination the complainant said that she felt pain when the Accused inserted his penis into her vagina. She also said that she cried when he inserted his penis. But when she was questioned as to why she did not complain to her mother about it she again said that she did not cry.
9. Although the complainant said that she informed the incident to her grandmother, when they left the Accused's house, the Prosecution did not call the grandmother to give evidence. But the mother of the complainant was called to give evidence and she gave evidence about new allegations which were not mentioned by the complainant. The Prosecution did not even establish that the complainant informed her mother about the alleged incidents. Therefore, I do not see any evidential value in her evidence.
10. The medical evidence too did not support the Prosecution case. The doctor said that she was only told that the Accused attempted to insert his penis into the complainant's vagina. She said that if she was informed that it was in fact inserted into her vagina, she would have recorded that in her report. Further she said that the hymen of the complainant was intact.
11. Although sexual offences do not need evidence of corroboration, I have considered whether the evidence given by the complainant is sufficient to prove the second count beyond reasonable doubt. It is my considered opinion that the evidence given by the complainant was not reliable, credible and consistent.
12. The Accused is indicted for a very serious offence and it is the duty of the Prosecution to prove the offence against the Accused beyond reasonable doubt. It

appears that the assessors have declined to believe the complainant, and, in my view, their unanimous opinion is justifiable.

13. In the circumstances I decide that the Prosecution failed to prove the second count against the Accused beyond reasonable doubt. I agree with the unanimous opinion of the assessors and I find the Accused not guilty to the second count too.
14. Accordingly, I acquit the Accused for the first and second counts.



A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal stroke.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the Accused: Kevueli Tunidau Lawyers