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

CRIMINAL APPEAL NO. HAA 32 OF 2019

BETWEEN	:	**PARMA GOUNDER**
		APPELLANT
AND	:	**STATE**
		RESPONDENT

Counsel	:	**Mr I Romanu for Appellant**
		Mr S Babitu for Respondent
Date of Hearing	:	**4 July 2019**
Date Judgment	:	**18 September 2019**

JUDGMENT

[1] Following a trial in the Magistrates' Court at Nadi, the appellant was convicted of two counts of abduction and two counts of defilement of an underage girl. The incidents occurred between August 2014 and July 2015 in Nadi. At the time of the incidents, the complainant was between 14 to 15 years of age. She was born on 1 April 2000. The appellant was an adult male.

[2] On 23 April 2019, the appellant was sentenced to a total term of 3 years, 8 months and 16 days imprisonment with a non-parole period of 3 years.

[3] On 17 May 2019, an appeal against conviction and sentence was filed. Subsequently, the appeal against sentence was abandoned.

[4] On 26 June 2019, the appellant amended his grounds of appeal. Seven grounds were filed. However, the issues can be summarized has follows:

(i) Whether the prosecution had proved that the complainant was abducted by the appellant?

(ii) Whether the medical evidence of pregnancy supported the account of the complainant that the appellant had sexual intercourse with her?

[5] At trial, the prosecution relied upon the evidence of the complainant and her grandmother. The grandmother gave evidence that she had raised the complainant since she was six months old. She said that in 2015 she suspected that the complainant was pregnant after noticing behavioural change in her. She took the complainant to the hospital. She discovered the complainant was pregnant. Later, the complainant gave birth to a baby girl.

[6] The complainant gave evidence. She confirmed her date of birth was 1 April 2000. In 2014, she was schooling and was in Form 3.

[7] The appellant befriended her through Facebook and organized a meeting. She knew him by his Facebook name 'James'. They met in Namaka. She accompanied him to a motel and had sexual intercourse with him until he ejaculated. He gave her $2.00 and she returned home.

[8] The next time they met in Lautoka. She accompanied him to a friend's house and slept together.

[9] The third time they met was in a carnival in Nadi. She accompanied him to a motel and had sexual intercourse until he ejaculated. After having sex, he paid her fare for her to return home. This last incident occurred in July 2015.Later that year she discovered she was pregnant. By that time she had left school.

[10] The appellant in his evidence told the trial court that he had befriended the complainant through Facebook. He met the complainant in person on the alleged occasions but did not have sexual intercourse with her. He admitted taking the complainant to a motel but said she ran away from there. He said that she told him she was 18 years old and was in Form 6.

[11] Section 211 of the Crimes Act defines abduction as follows:

> (1) A person commits a summary offence if he or she, with intent that any unmarried person under the age of 18 years shall be unlawfully and carnally known by any person (whether such carnal knowledge is intended to be with any particular person or generally), takes or causes to be taken the person out of the possession and against the will of his or her father or mother, guardian or any other person having the lawful care or charge of the person under 18 years.
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> (2) It shall be a sufficient defence to any charge under this section if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the other person was of or above the age of 18 years.

[12] In the context of the present case, the prosecution was required to prove that the appellant with the intention to have sexual intercourse with the complainant took her out of the possession and against the will of her grandmother who was her guardian. The question of whether the complainant was in the possession of her grandmother is a question of fact. It is not necessary for the prosecution to prove that the girl was taken by force or that the girl consented or not (*R v Manktelow* (1853) 6 Cox 143). All that the prosecution need to prove is that there was a substantial interference with the possessory relationship of guardian and child (*Ali v The State* [2003] FJHC 67; HAA0008J.2002L (14 March 2003)).

[13] At trial, it was not in dispute that the complainant was under 18 years of age and was unmarried when the incidents occurred. The complainant's evidence was that she did not tell the appellant her age because she assumed he already knew her age. She said she befriended him through one of her school friends who had known him. She accompanied him to motels on his request and had consensual sexual intercourse. The arrangements for the motel rooms were made by the appellant. According to the grandmother she only learnt of the incidents when she came to know the complainant was pregnant. When the

appellant met and took the complainant to motels without the consent of the grandmother he substantially interfered with the possessory relationship of guardian and child.

[14] For the proviso to apply under subsection (2), the onus is on the Accused to prove that he had reasonable cause to believe and did in fact believe that the complainant was over 18 years of age (*Sami v State* [2004] FJCA 54; AAU0046.2002S (26 November 2004)). The standard is balance of probabilities. The appellant relied upon a similar proviso for the defilement charges.

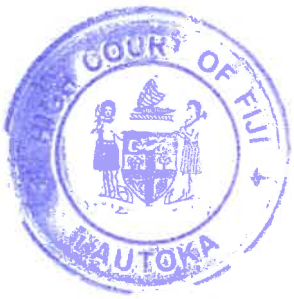
[15] The learned trial magistrate did not believe the evidence of the appellant. He believed the evidence of the complainant. He said that the medical evidence of pregnancy supported the complainant's account of the alleged incidents despite there being no medical evidence of paternity.

[16] On 26 November 2015, the complainant was medically examined as part of a standard police investigation procedure. The medical report of that examination was led in evidence without calling the doctor. In that report a finding was recorded that as of 26 November 2015, the complainant was 25 weeks pregnant.

[17] Counsel for the appellant submits that 25 weeks pregnancy did not support the complainant's account that the last sexual intercourse occurred in July 2015. I disagree. The victim conceived during the period covered by the charges. There was no need to prove the exact date of conception. As far as there was evidence that pregnancy occurred during the period covered by the charges, the evidence supported the complainant's account that the appellant had sexual intercourse with her. The learned trial magistrate did not err in accepting the complainant's account that the appellant had sexual intercourse with her and to reject the denial of the appellant. There was no evidence to show that the appellant had reasonable cause to believe that the complainant was over 18 years of age as claimed by him. The findings of guilt on all four charges are supported by evidence. This Court affirms those findings.

Result

[18] Appeal dismissed.



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Hon. Mr Justice Daniel Goundar

Solicitors: MIQ lawyers for Appellant

Office of the Director of Public Prosecutions for Respondent