

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

Crim. Case No: HAC 153 of 2020

STATE

vs.

ARVEEN KRISHNA

Counsel: Mr. Seruvatu for the State
Mr. Prakasharan for Accused

Date of Hearing: 3rd to 5th April, 2024
Date of Closing Submission: 8th April 2024
Date of Judgment: 19th April 2024

JUDGMENT

1. The name of the Complainant is suppressed and referred to as “**KKK**”.
2. The Accused is charged with three counts of **Rape** , contrary to Section 207 (1), (2) (a) and two counts of **Sexual Assault**, contrary to Section 210 (1) (a) Crimes Act, 2009. The particulars of the offences are:

Count 1

Statement of Offence

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

Particulars of Offence

ARVEEN KRISHNA on the 17th day of August 2020 Nadi in the Western Division had carnal knowledge of “**KKK**” a child below the age of 13 years.

Count 2

Statement of Offence

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

Particulars of Offence

ARVEEN KRISHNA, between the 17th day of August 2020 at Nadi, in the Western Division unlawfully and indecently assaulted "**KKK**".

Count 3

Statement of Offence

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

Particulars of Offence

ARVEEN KRISHNA between the 24th day of August 2020 at Nadi, , in the Western Division had carnal knowledge of "**KKK**" a child below the age of 13 years.

Count 4

Statement of Offence

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

Particulars of Offence

ARVEEN KRISHNA, between the 24th day of August 2020 at Nadi, in the Western Division unlawfully and indecently assaulted "**KKK**",

Count 5

Statement of Offence

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

Particulars of Offence

ARVEEN KRISHNA between the 28th day of August 2020 at Nadi, in the Western Division had carnal knowledge of "**KKK**" a child below the age of 13 year

3. The Accused pleaded not guilty to three (03) counts of Rape and two (02) counts of Sexual Assault. The hearing commenced on the 28th of March 2024 and concluded on the 8th of April 2024. The Prosecution called three witness that was the Complainant her mother and the Doctor. After the Prosecution's evidence, the learned Counsel for the Prosecution conceded that the Complainant provided no evidence for fourth (04) count and invited the Court to act under Section 231 (1) of the Criminal Procedure Act. The Court, accordingly, found the Accused not guilty of count four (04) of Sexual Assault in the Information and acquitted him of the same, thus leaving only the first (01) the third (03) and fifth (05) counts of Rape and the second count (02) of Sexual Assault to remain in the hearing. Upon completion of the prosecution's case, the learned Counsel for the Defence informed the Court that the Accused opted to give evidence and called witnesses for the Defence.
4. Having carefully considered the evidence of the Complainant and the accused including the oral submissions made by the Counsel of the Prosecution and the Defence, I now proceed to pronounce the Judgment as follows.

Burden and Standard of Proof

5. I first draw my attention to the burden and standard of proof. The Accused person is presumed to be innocent until he is proven guilty. The burden of proof of the charge against the Accused persons is on the Prosecution. It is because the Accused person is presumed innocent until he is proven guilty.
6. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offences without any reasonable doubt.

Elements of the Offences

7. The main elements of the first , third and fifth count of **Rape** are that:
 - i) The Accused,
 - ii) Penetrated the vagina of the Complainant with his penis,
 - iii) The Complainant was a child under the age of 13 years,
8. The main elements of the second count of **Sexual Assault** are that:
 - i) The Accused,
 - ii) Unlawfully and indecently assaults
 - iii) The Complainant

Admitted Facts

9. There are no admitted facts in this case however I have observe during trial the following facts were not disputed during trial by the parties;
 - a) The complainants date of birth 20th of March 2008.
 - b) That at the time of the alleged offence on the 17th, 24th and 28th of August 2020 the complainant 12 years old and was a class 7 student at A.D. Patel Memorial Primary School.

- c) That the date and time of the alleged offence dated 17th 24th and 28th of August 2020 the accused had picked up the complainant to take her to school.

Prosecution Case

10. The prosecution called **Dr Deepa Darshani Mala** as their first witness. The witness had graduated with a Bachelors of Medicine and Bachelors of Surgery from the University of Fiji. She commenced work as a medical officer at Ba mission hospital in 2019 and later at Namaka in 2020 also looking after Nadi hospital.
11. She recalled on the 12th of September 2020 she examined the complainant "KKK" at Nadi Hospital. The complainant was brought into the hospital by the police with her mother. She compiled the Police Medical Examination Report of the complainant after examining her. The medical examination was conducted at Nadi hospital. The complaints mother was present with another doctor namely Doctor Tomasi.
12. Thus, According to Doctor Deepa specific findings she has noted that she was unable to find any visible injuries or any bruises or any old injuries but when she examined the complainant's genitals she found the hymen not intact. Hence, there wasn't any seminal fluid or any other lacerations or any bruising noted.
13. According to the witness the injuries would heal within one and half weeks. The injuries would no longer shown or exist after one week and a half to two weeks from the date of the injuries. Thus it usually does not when the injuries a more than two to three weeks.
14. The doctor further expressed that injuries would not show if penile penetration had happened 12 or 14 days prior to the medical examination of the complainant.
15. Hence, the doctor summarize that recent sexual intercourse would mean not more than 2 to 3 days.
16. The doctors conclusion was the hymen was not intact and she was unable to make a finding conclusion because there was no bruises or laceration noticed which would have determined if there was a forced entry.
17. She said the complainant was 12 years when she examined her and it is not common for girls aged 12 years for hymen not intact.
18. In cross examination the doctor stated that if they have recent intercourse and it was forcefully done there will be lacerations, bruises, swelling and sometimes there could be seminal fluid noted. She was unable to find any.

19. According to her no signs of recent sexual intercourse means a couple of days.
20. Again in cross examination she said she cannot say that the hymen was not intact because of sexual intercourse because the examination happens 3 weeks later. So within those 3 weeks even if there were any symptoms it would resolved.
21. In re-examination she said that it was not common for the complainant at such an age for her hymen not to be intact.
22. Prosecution than called the **complainant "KKK"as the second witness.** The complainant is a twelve (12) years old and she was born on the 20th of March 2008. She is a class 7 student at A.D. Patel Memorial Primary School and residing in Malolo Nadi.
23. According to the complainant she resides with her parents, her elder sister and her cousin brother. Her mother's name is Vikashni Narayan Gounder and her sister's name is Christine Kartika Krishna.
24. The complainant recalls on the morning of the 17th of August 2020 she was standing at their porch when the accused whom she called "Hannah" meaning "brother" called her and told her that he will drop her to school but she said no to him and that she will go by bus to school. The real name of the accused is Arveen Krishna.
25. She identified and pointed at the accused at the gallery to be Arveen or "Anna" meaning "brother". The complainant said Arveen the accused is not her biological brother but he is related somehow to her family through her father's side.
26. She said that the accused lived 5 feet away from their house and they are neighbours.
27. The complainant said after the conversation the accused had left she went and stood beside her neighbours house and the accused picked her up.
28. The complainant was alone in the accused car after the daughter of the accused was dropped off at her school.
29. According to the complainant whilst the two were alone in the taxi the accused lift up a laptop from the front seat and played a video and he told her to see the video. The video was a Sunny Leone video and it's a sex video. There was no pictures from the video except the sound coming out.
30. The accused than drove to Wailoaloa Beach. She was sitting quietly inside the car. There were two roads at Wailoaloa Beach. They drove in on the second road. The vehicle was parked at the beach. She was seating at the back and he was seat the front seat. They were there for a while and then he

came to the backseat and told me to shift inside. She did not want to shift and the accused shifted her to the other end of the back seat. He then close the door.

31. The accused told her to remove her shoes. The accused than shift the front seat in front and sat down on his knees kneeling. She said at that time she was at the corner the accused was in front of her. The accused than lifted up her dress right to underneath her breast, Took off her tights and panty and laid her down and leaked her vagina. She said she could feel it and also saw the accused leaking her vagina. She said she did not say anything to the accused and she did not feel good. She said after the accused leaked her vagina he stood up and came on top of her and took out his penis. She said she saw the accused took out his penis and inserted it into her vagina. She said she had seen all this and also could feel it. She said it was painful and she yelled.
32. She said she yelled like when it was very painful and she said "aah" as if somebody have got injured from a fall. She said he was doing it from four to five minutes.
33. Than after that he took out his penis and wiped it with a cloth and he gave the complainant her clothes and she wore it. She said this was the first time it happened to her. He said she did not do anything. She said she was not able to understand what to do.
34. She said when she went to relieve herself, the accused was still inside the car. She said she did not leave from there because she don't know where to go to and also she did not have any money.
35. When returning to the vehicle she said she told the accused that when using washroom she could feel her vagina was burning and she told the accused that she will tell her papa to take her to hospital. The accused told her not to go to hospital because doctor will know that she had sex.
36. She said that after that the accuse drove a little bit further and they sat there for a while and at 2.45 pm the accused took her back and dropped her near the canteen close to her home. She said the accused did not drop her straight to her home because the neighhours were there and if they saw them they will asked questions.
37. She said that she did not inform her elder sister that afternoon when she reached home because the accused told her not to say anything to anyone and she was also frightened that if she said anything to anyone her parents will know and they will assault her.
38. Again she recalled the 24th of August 2020 it was the following Monday. She was going to school with the accused daughter and the accused in their vehicle. She told the accused not to drop her off to school as she does have not a pen and she wanted to buy a pen from the bookshop.

39. She said the accused dropped her daughter off at her school, hence did not take her to the bookshop but took her to Kerebula.
40. She said that despite what the accused had previously done to her she continue to accompany him and his daughter in the same vehicle because she wanted to make everybody feel that everything is normal. She did not want anybody to know what had happened.
41. She said at Kerebula the accused had parked his vehicle past his mother in law's place in a ground. The ground is surrounded by a jungle. She said there was no other vehicle parked there.
42. She said she was sick that day and she told the accused to drop her to school but he refuse and told her "leave it go to school tomorrow". She said she did not do anything.
43. She said the accused came to the backseat where she was seating and form the backseat into a bed. On that day she was feeling weak and sick. The accused removed her uniform she was wearing and then pull down her tights and panty again took out his penis and he inserted it inside her vagina. She said she did not feel good on whatever the accused was doing to her.
44. She said she saw the accused putting his penis into her vagina. She said she could not recall how long did it take. She said after the accused had inserted and took out his penis from her vagina he wiped his penis on a piece of cloth.
45. The accused than dropped her at the same place. Her sister and grandfather were at home when she arrive at home that afternoon. She did not tell her sister because she was frighten and did not want to let anybody knew about this. She did not want anybody to know because she was frighten that her parents might know about it.
46. She recall that on the 28th of August 2020 she was again travelling on the accused vehicle going to school. On this day she stated that it was the accused, his son, his daughter and herself. His sons name is Kavil Krishna.
47. She said when they reach town the accused dropped his son at Vodaphone and the accused dropped her daughter at her school. Again the accused drove to Kerebula ground. The accused parked his vehicle and the complainant told him that she is not feeling good and asked him to take her and drop her home. The accused replied that they have sex a little bit and she will feel good.
48. She said the accused than did to her what he had done to her on the past two occasions he inserted his penis into her vagina. She was very weak that time as she was sick for the whole week and she could not ran away because of her weak condition.

49. She said that after the third sexual encounter the accused then dropped her at the same canteen and she went home she did not complain to her sister because she was frightened that her parents might hear it and they will assault her.
50. Further she stated that her neighbors' daughter had called for her to speak to her sister in law who had asked her whether the accused was doing. She revealed her complaint to her mother on what the accused had done to her. She then made up her mind to tell her mother of what had happened to her as the neighbors have already known it by now. She told her mother that the accused had sexual intercourse with her three times. The matter was reported to police and the complainant was taken for medical examination on the 12th of September 2020.
51. The complainant identified and pointed at the accused sitting near his counsel as the said Arveen who had committed these offences.
52. The next witness was **Vikashni Narayan Gounder**. She was the mother of the complainant. She confirmed that the complainant is her youngest daughter and her date of birth was 20th March, 2008. Further she said that her daughter is a class 7 student at A.D.Patel Primary School. She recalled that the complainant informed her on the 12 of September 2020 that the accused had sexual intercourse with her for three times in August 2020. She said the accused is related to her husband and is like a brother to her daughter.
53. She said accused used to pick her daughter up to go to school in his taxi. She said that the accused after dropping his daughter at the daughter's school took the complainant to Wailoaloa and had sex with her there.
54. Again on the second and third occasion pick up her daughter to take her to school but instead took her to Kerebula and had sex with her there. She said that her daughter did not inform them about what happened because she was scared that they will beat her up.
55. She said that her daughter the complainant first informed her sister in law "Pinky" and on the same afternoon and then informed her when she arrived from work.
56. She identified the accused sitting at the gallery and pointed at him. She said she knew the accused for the last 22 years.
57. In cross examination she said her relationship with Arveens family was good prior to this incident. She added that after the incident their relationship was bitter. She confirmed that what she is telling the court is the truth.
58. Again in cross examination she said that Arveen told the complainant her daughter not to tell anyone otherwise he will get 13 years imprisonment.

That is the end of the prosecution's case

59. The Defense Counsel made an application for No case to answer for count number four (04) Sexual Assault, State Counsel concedes to the application. Pursuant to section 231(1)(a)I find that there are no evidence presented by prosecution for the same and upheld the application for NO case to Answer against the accused on Count four Sexual Assault. The accused is acquitted accordingly for the same.
60. Hence, I found that there is a case to answer for Counts one (01), two (02), three (03) and five (05) of the information. Election was put to the accused. The accused opted to give evidence and call two (02) witnesses for its case.

Accused case

61. The accused Arveen Krishna was the first witness that the defence called. The accused said that in 2020 charges were laid against him and he does not agree with the same. The accused denied the allegations made by the complainant.
62. He said the victim is his cousin. The accused said that in 2020 the complainant was in class 7 and 12 years old.
63. The accused said they have a family problem and also blockage of driveway. The accused said they did not want him to use that driveway. He said they had a problem with Pinky who is the cousin's wife, the driveway came into their boundary which they wanted to fence but they were all using that driveway. The argument starts when Pinky's family put the gate there.
64. The accused could remember the 17th of August 2020 he picked up the complainant to take her to school with his daughter. He said sometimes the complainant stands on the road side so he would pick her up.
65. He said he dropped her daughter first than dropped the complainant after at her school. The accused said that the complainant went in his taxi twice. He said the second time he dropped her at the front gate.
66. The accused agreed that the complainant comes to her house every afternoon to play. He said they used to call the complainant by the name "Anggy".
67. He said the bitterness between the complainant's family and his family had begun when the complainant's mother was involved in extra marital relationship. He said from that time the mother stop talking to him.
68. He said just because of the gate problem and the road incident the complainant's family have abused them.

69. In cross examination It was put to the accused the gate problem was the dispute between the accused and pinky's family and the complainants family has nothing to do with it. The accused agreed to the same.
70. Again in cross examination it was put to the accused that this incidents with the complainant has nothing to do with the road side incident or the alleged extra marital affairs of the complainant's mother. The accused agreed to the suggestion.
71. The defence called the daughter of the accused **Shenali Vishalni Mala** the second witness for the defence. The daughter confirmed that the accused her father had always dropped her first prior to dropping the complainant at her school.
72. The defence called the **Kavnil Krishna** as the third witness for the defence . In his evidence he recalled that the complainant had accompany them in his father's taxi once or twice to be dropped to school. He said that he recall there as some conversation happening whilst stopping near Paper Power shop but he cannot recall what it was about.

Recent Complaint Evidence

73. In cross examination it was put to the complainant why she did not complain to the canteen owner, the complainant sister the accused wife and the mother of the complainant on the three incidents of rape on the 17th, 24th and 28th of August 2020. She replied that she was afraid that her parents will hear it and will assault and bit her.
74. Complainants of sexual offences may react in different ways to what they may have gone through. Some in distress or anger may complain to the first person they see. Some due to fear, shame or shock or confusion, may not complain for some time or may not complain at all. A complainant's reluctance to complain in full as to what had happened could be due to shame or shyness or cultural taboo when talking about matters of sexual nature.
75. A late complaint does not necessarily signify a false complaint and on the other hand an immediate complaint does not necessarily demonstrate a true complaint. It is a matter for this court to determine what weight would be given to the fact that the complainant told her mother immediately after the alleged incident that the accused had done something bad to her. This is commonly known as recent complaint evidence.
76. The evidence given by complainant's mother **Vikashni Narayan Gounder** is not evidence of what actually happened between the complainant and the

accused since this witness was not present and did not see what had happened. This court is, however, entitled to consider her evidence as recent complaint in order to decide whether the complainant is a credible witness.

77. I accept that whatever the complainant told her mother **Vikashni Narayan Gounder** was enough to alert that the accused had sex with her three times. There is no legal requirement that a complainant is supposed to tell every detail of what he or she has encountered to the person complained to.
78. The Supreme Court in **Anand Abhay Raj vs. The State, CAV 0003 of 2013 (20th August, 2014)** at paragraph 39 made an important observation about the above as follows:
The complainant need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence
79. The decisive aspect of the recent complaint evidence of **Vikashni Narayan Gounder** is to show consistency of the complainant's conduct with her evidence given at trial. It is not expected that a child of 12 years or anyone for that matter who has had an unexpected sexual encounter to give every detail of the accused unlawful sexual conduct to the person the complaint is relayed to.
80. In this case **Vikashni Narayan Gounder** was relayed crucial information that the accused had sexual intercourse with her daughter. I also accept the observations of Vikashni that the complainant was vomiting and distressed and that the accused had sexual intercourse with her on three occasions.

Analysis

81. The Court is minded of section 129 of the Criminal Procedure Act 2009 which states that "when person is tried with an offence of sexual nature NO corroboration evidence of the complainant is necessary for that person to be convicted.
82. The evidence of the 12 year old complainant was not compromised during cross examination by defense counsel. The complainant strongly maintained her stand during cross examination by defense counsel that the accused leaked her vagina with his tongue and on the 17th of August 2020. And inserted his penis into her vagina on the 17th, 24th and 28th of August 2020.

83. The complainant maintained that the accused inserted his penis into her vagina on the 17th of August 2020. According to her it was her first time and it was very painful. The complainant yelled when the accused penetrated her vagina with his penis.
84. Thus, she stated that she did not escape or ran away whilst relieving herself in the bush on the first occasion. She replied that she was not aware of the place that she was in and she did not have any money with her. Again during the second incident at the jungle of Kerebula she explain that she was sick and thought that if she ran away she would faint. Hence, on another occasion she was question as to why she did not ran away or seek for help when the accused had left her alone in the taxi and went out to his workplace. She replied that she was weak and sick on that week.
85. She had not complained to the canteen owner about what the accused had done to her because it did not occur to her to complain to the canteen lady. She did not complain to her elder sister because she was afraid that the elder sister will made it known to her parents and her parents will bit her.
86. I have heard and watched the demeanor of the 12 year old complainant whilst giving evidence on the stand. She was firm and unshakeable and confident whilst giving evidence. I believed the complainant's evidence be credible and reliable proving the elements of the offence of three counts of rape and one count of sexual assault.
87. The evidence of prosecution witness 2 Vikashni Narayan Goundar the mother of the accused was consistent to the evidence of the complainant. She relayed exactly what the complainant had said in her evidence on how the accused committed these offences against her. Her evidence was consistent to the complainant's evidence.
88. The doctor's findings were also relevant in that the complainant's hymen was not intact and could have been broken as a result of sexual intercourse. Also it was not common for the complainant at such an age for her hymen not to be intact.
89. In **Matasavui v State [2016] FJCA 118; AAU0036.2013 (30 September 2016)** at paragraph 23 the court made the following observations on **credibility of evidence;**

*A truthful witness could sometimes be unreliable or his or her version could be distorted due to the intervention of extraneous factors. Therefore both tests are important. In determining whether a witness is truthful and reliable the court would be assessing the testimonial trustworthiness of the witness. Such assessment would have to be based on an objective application of several tests of credibility, such as the tests of **promptness/spontaneity,***

probability/improbability, consistency/inconsistency, contradictions/omissions (inter se & per se), interestedness/disinterestedness/bias, the demeanour and deportment in court, and the availability of corroboration where relevant.

90. Upon analyzing the evidence of the prosecution very carefully, I find that the complainant's testimony has stood the test of probability, consistency, want of contradictions, promptness and enhanced by the corroboration in the form of medical evidence, though in terms of section 129 of the Criminal Procedure Act, 2009 corroboration is no longer required in cases of sexual nature and no warning by the judge of lack of corroboration is also required in terms of the same section.
91. The defence case theory was that the whole allegation was fabricated because of family problems and blockage of drive away leading to the accused residence and that complainant's mother was having marital problems.
92. Thus, the evidence of the accused stated that on the 17th of August 2020 he had conveyed the complainant together with his daughter to drop them at their respective school. The accused agreed that he drop his daughter first to her school and the according to him he drop the complainant to her school. The accused denied taking the complainant to Wailoaloa.
93. However, there was no evidence to affirm that the accused was with someone else from 8.00am to 2. 45pm on the 17th of August 2020. Thus the same applies to the second incident 24th of August 2020 as well as the third incident on the 28th of August 2020. The accused was unable to confirm that he was with someone else on the other two respective dates and time.
94. Hence, it was obvious from the evidence that the driveway blockage dispute was between "Pinky" who is their neighbor and the accused and not the complainant's family. The drive way blockage have nothing to do with complainant's family. The marital problems of the complainants' mother have nothing to do with the accused. Thus the relationship between the accused family and the complainant family was good before the incident and became bitter after the incident was made known.
95. The blockage of the driveway dispute was between "Pinky" (a neighbour) and the accused and has nothing to do with the complainant or her family. Furthermore, the marital affairs of the complainant's mother have nothing to do with the accused.
96. The relationship of the complainant's family and the accused family were good in the first instance. The complainant almost every day after school visits the accused home to play with her daughter who was her friend. The

relationship became bad when the incident was revealed and matter reported to the police.

97. I have heard the evidence of the accused and also watched his demeanor whilst giving evidence. I refuse to accept his denial as the reasons provided were unbelievable, insignificant and unreasonable.

Determination

98. I again wish to remind myself that the burden to prove the accused guilty beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if I reject the version of the defence still the prosecution must prove this case beyond reasonable doubt.
99. For the First count of Rape, The particulars of the offence reads; The accused person Arveen Krishna on the 17th day of August 2020, had carnal knowledge with "KKK" a girl under the age of 13 years. There is no dispute as to the identity of the accused. The complainant in her evidence stated that the accused is her "Hannah" meaning brother. The accused is her neighbour and the daughter is her friend. She also identified and pointed at the accused in court. The Court believed the evidence of the Complainant that she said the accused took out his penis and inserted it into her vagina. She said she yelled out as it was very painful. The doctor's evidence that the hymen of the complainant is not intact. The evidence of the complainant's mother that the complainant was born of 20th of March 2008 confirms that the complainant was 12 years old at the time of the offending. The Court is of the view that the State has proven all the elements of the rape for the first Count.
100. For Count two of Sexual Assault The important issue that needs to be determined is whether the act of leaking the complainant's vagina was indecent and unlawful.
101. An assault is the deliberate and unlawful touching of another person. The slightest touch is sufficient to amount to an assault and it does not have to be a hostile or aggressive act or one that caused the complainant fear or pain. Unlawful means without lawful excuse.
102. The word "indecent" means contrary to the ordinary standards of respectable people in this community. For an assault to be indecent it must have a sexual connotation or overtone. If an accused touches the complainant's body or uses in a way which clearly gives rise to a sexual connotation that is indecent.

103. The complainant in her evidence in chief confirmed that she was 12 years old and the accused removed her tights and panty and had leaked her vagina.
104. The Court is of the view that the State has proven all the elements of the Sexual Assault for the second Count.
105. For the third count of Rape, The particulars of the offence reads; the accused person Arveen Krishna on the 24th day of August 2020, at Nadi in the Western Division had carnal knowledge with "KKK" a girl under the age of 13 years.
106. Again the issue of identification was proven by the complainant when she identified and pointed out the accused in court. The Court believes the evidence of the complainant that on 24th of August 2020 the accused penetrated her vagina with his penis and during that time the complainant was still 12 years of age The Court is of the view that the State has proven the element of penetration and the age of the complainant on the third count of Rape.
107. On the Fifth Count of rape The particulars of the offence reads; The accused person Arveen Krishna on the 28th day of August 2020, at Nadi in the Western Division had carnal knowledge with "KKK" a girl under the age of 13 years.
108. On the issue of identification was proven by the complainant when she identified and pointed out the accused in court. The Court believes the evidence of the complainant confirming that on the 28th of August 2020 the accused penetrated her vagina with his penis and during that time the complainant was still 12 years of age. The Court is of the view that the State has proven the element of penetration and the age of the complainant on the fifth count of Rape.

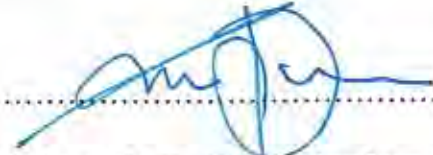
CONCLUSION

109. This court is satisfied beyond reasonable doubt that the accused Arveen Krishna on the 17th of August 2020 at Nadi in the Western division had carnal knowledge with "KKK" a girl under the age of 13 years.

110. This Court is satisfied beyond reasonable doubt that the accused Arveen Krishna on the 17th of August 2020 at Nadi in the Western division had unlawfully and indecently assaulted “KKK”
111. This court is satisfied beyond reasonable doubt that the accused Arveen Krishna on the 24th of August 2020 at Nadi in the Western division had carnal knowledge with “KKK” a girl under the age of 13 years.
112. This court is satisfied beyond reasonable doubt that the accused Arveen Krishna on the 28th of August 2020 at Nadi in the Western division had carnal knowledge with “KKK” a girl under the age of 13 years.
113. In view of the above, I find the accused guilty of first count of Rape, guilty on the second count of Sexual Assault, guilty on the third count of Rape and guilty on the fifth count of rape and I convict the accused accordingly for the same. The accused is acquitted accordingly on fourth count of Sexual Assault in the information.
114. The decision of the Court are as follows;
- 1st Count – Rape – Guilty
- 2nd Count – Sexual Assault- Guilty
- 3rd Count – Rape – Guilty
- 4th Count – Sexual Assault- Not Guilty and Acquitted.
- 5th Count- Rape – Guilty.

This is the judgment of the court




Sekonaia V. Vodokisolomone
Acting Puisne Judge

High Court – Lautoka
Friday 19th April 2024