

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 155 OF 2013

BETWEEN : STATE

AND : VISHAL KRISHNA

Counsel : Ms. J. Fatiaki for State
Ms. Volau for the Accused

Date of Hearing : 16th - 17th of August 2016

Date of Closing Submissions : 17th of August 2016

Date of Summing Up : 23rd of August 2016

Date of Judgment : 24th of August 016

JUDGMENT

1. The name of the victim is suppressed.
2. The accused is charged with one count of Indecent Assault contrary to Section 212(1) of the Crimes Decree, one count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Decree, one count of Sexual Assault contrary to Section 210 (1) (a)

of the Crimes Decree and one count of Rape Contrary to Section 207 (1) and (2) (b) of the Crimes decree. The particulars of the offences are that;

First Count

Indecent Assault: Contrary to section 212(1) of the Crimes Decree 44 of 2009.

Particulars of Offence

Vishal Krishna between the 1st of April 2012 and the 1st of May 2013 at Sigatoka in the Western Division, unlawfully and indecently assaulted A.A by caressing her breasts.

Second Count

Rape: Contrary to section 207(1) and (2) of the Crimes Decree 44 of 2009.

Particulars of Offence

Vishal Krishna between the 1st of April 2012 and the 1st of May 2013 at Sigatoka in the Western Division, inserted his penis into the vagina of A.A without her consent.

Third Count

Sexual Assault: Contrary to Section 210 (1) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

Vishal Krishna between the 1st of April 2012 and the 1st of May 2013 at Sigatoka in the Western Division, unlawfully and indecently assaulted A.A by rubbing his penis on her vagina.

Fourth Count

Rape: Contrary to Section 207(1) and (2) (b) of the Crimes Decree 44 of 2009.

Particulars of Offence

Vishal Krishna between the 1st of April 2012 and the 1st of May 2013 at Sigatoka in the Western Division, inserted his fingers into the vagina A.A without her consent"

3. The accused pleaded not guilty for these four counts. Accordingly the matter proceeded to hearing. The hearing commence on the 16th of August 2016 and concluded on the 17th of August 2016. The Prosecution called three witnesses, including the victim. The accused gave evidence but did not call any other witnesses for his defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing submissions. I then delivered my summing up.
4. The three assessors returned with unanimous verdict of guilty for each of the four counts. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
5. Having carefully considered the evidence adduced during the hearing, the agreed facts tendered by the parties, respective closing submissions of the


counsel, the opinion of the three assessors and the summing up, I now proceed to pronounce the judgment as follows.

6. The prosecution alleges that the accused has committed these four offences on the victim between 1st day of April 2012 and 1st day of May 2013. In respect of the first count, the prosecution alleges that the accused touched the breast of the victim while she was revising her notes in her bed room. In respect of the second and third count, it has been alleged that that accused came behind the victim while she was cleaning the bed room of her aunty and pushed her on to the bed. He then unbuttoned her top and lifted her skirt. The accused then indecently rubbed his penis on her vagina. He then inserted his penis into the vagina of the victim without her consent. In respect of the fourth count, the prosecution alleges that the accused came to the victim while she was sleeping in her room in the night and inserted his finger into her vagina.
7. The accused in his evidence denies these all allegations and states that he never done such things to the victim.
8. The learned counsel for the defence submitted in her closing address that the lateness of the victim in reporting this matter to her aunty, makes the eventual complaint she made less reliable and credible. The victim in her evidence explained the reasons why she did not inform her aunty, father, teacher or any other elderly person about these allegations. She was fourteen years old at that time. Her mother has passed away and her father is now married to another person. Her step mother has ill-treated her, forcing her to live with the family of the accused. Having considered the reasons given by the victim for not reporting the matter promptly and her personal circumstances, I find the lateness in

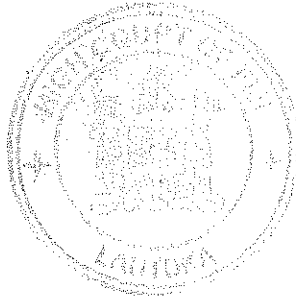
complaining this matter to her aunty has not adversely affected the credibility and reliability of the evidence given by the victim.

9. Furthermore, the learned counsel for the defence cross examined the victim about the inconsistent nature of the statements made to the police and the evidence given in court. Three of the incidents that the victim alleged in her evidence in court has not been recorded in her statement. They are; the kissing of her lips by the accused, the touching of her breast by the accused while she was revising her notes in her bed room and the incident that he came on top of her and forced her to have sex while she was sleeping on the floor at the lounge. The victim in her evidence stated that she told the police everything, but they have not recorded them in the statement.
10. Having observed the victim giving evidence in court and her explanation given for the inconsistent nature of the evidence and the statement made to the police, I do not find it has adversely affected the credibility of the evidence given by the victim.
11. The victim was straight, precise and consistent in giving her evidence. She was not evasive. She answered completely to the questions posed on her. I observed her demeanor when she was cross examined.
12. In view of the reasons discussed above, I accept the evidence given by the victim as credible, reliable and truthful. I do not accept the evidence given by the accused as credible and reliable. I further find that the accused failed to create any reasonable doubt in the prosecution's case.

13. Accordingly, I do not find any cogent reasons to disregard the unanimous guilty verdict given by the three assessors. Hence, I find the accused is guilty for one count of Indecent Assault contrary to Section 212(1) of the Crimes Decree, one count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Decree, one count of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Decree and one count of Rape Contrary to Section 207 (1) and (2) (b) of the Crimes decree and convict him for each of these four counts accordingly.


R. D. R. Thushara Rajasinghe
Judge

At Lautoka
24th of August 2016



Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission