

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

CRIMINAL CASE NO: HAC. 314 of 2015

STATE

V

AVNEEL CHAND

Counsel : Ms. S. Serukai for State  
Mr. J. Reddy for Accused

Dates of Hearing : 27<sup>th</sup> -29<sup>th</sup> September 2016

Date of Summing Up: 30<sup>th</sup> September 2016

Date of Judgment : 30<sup>th</sup> September 2016

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as SSL)

JUDGMENT

1. The accused is charged with the following offence;

*Statement of offence*

**Rape:** Contrary to section 207 (1) and (2)(a) of the Crimes Decree, No. 44 of 2009.

*Particulars of offence*

**AVNEEL CHAND** on the 19<sup>th</sup> day of September, 2015 at Koronivia, Korovou, Nausori in the Central Division, penetrated the vagina of SSL, with his penis without her consent.


2. The assessors have returned with a unanimous opinion that the accused is not guilty of the above offence, but guilty of the lesser offence of defilement.
3. I direct myself in accordance with the summing up delivered to the assessors on 30<sup>th</sup> September 2016 and the evidence adduced during the trial.
4. The complainant was the only witness called by the prosecution. The accused gave sworn evidence.
5. The accused admits that he had sexual intercourse with the complainant, but he says it was consensual. Therefore the issues before the assessors were whether the complainant consented for the accused to penetrate her vagina with his penis and whether the accused knew or believed that she was not consenting or the accused was reckless as to whether or not she was consenting.
6. I have carefully observed the demeanour of the complainant when she gave evidence and considered the evidence she gave in court. In my view, the complainant was evasive and her evidence was not consistent. Her version of events that took place on 19/09/15 between her and the accused contains serious doubts with regard to whether or not she had consensual sexual intercourse with the accused.
7. Accordingly, I find that the prosecution has failed to prove the offence of rape beyond reasonable doubt.
8. Taking into account the admitted facts and the evidence presented during the trial, the assessors were directed to consider whether the accused is guilty of

the lesser offence of defilement in the event they find the accused not guilty of rape as charged.

9. The following facts are admitted in this case *inter alia*;
  - a) *That the complainant in this matter is SSL aged 15 years at the time of the alleged offence.*
  - b) *That the Accused and the Complainant had sexual intercourse on the 19<sup>th</sup> of September, 2015.*
10. The complainant said that she knew the accused for about 10 years and the accused also said that he knew the complainant from a young age. As mentioned above, the accused had admitted that the complainant was 15 years old at the time of offence and he did not raise the defence that he had reasonable cause to believe, and did in fact believe, that the complainant was of or above the age of 16 years at the material time.
11. In terms of section 215(1) of the Crimes Decree 2009 '*a person commits a summary offence if he or she unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years*'.
12. In view of the above, the offence of defilement is made out beyond reasonable doubt.
13. Therefore, the unanimous opinion of the assessors that the accused is not guilty of the offence of rape as charged and that he is guilty of the offence of defilement is not perverse. It was open for them to reach that conclusion based on the evidence.
14. I concur with the unanimous opinion of the assessors. I find the accused not guilty of rape as charged and acquit him accordingly.

15. I find the accused guilty of the offence of defilement under section 215(1) of the Crimes Decree and convict him accordingly.



  
Vincent S. Perera  
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Jiten Reddy Lawyers, Nasinu.