

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 180 OF 2015**

**STATE**

**VS**

**ANIL KUMAR**

**Counsel : Ms. M. Chowdhury for the State**

**Ms. T Kean for the Accused**

**Hearing : 11<sup>th</sup> October and 13<sup>th</sup> October 2016**

**Summing Up : 14<sup>th</sup> October 2016**

**Judgment : 17<sup>th</sup> October 2016**

---

## **JUDGMENT**

---

- [1] The accused, **ANIL KUMAR** is charged for committing Rape, contrary to Section 207 (1) and (2)(a) of the Crimes Decree No. 44 of 2009, on Talei Uluiviti, who was 13 years old at the time of the alleged offending.
- [2] He pleaded not guilty to the count of Rape and the ensuing trial lasted for 2 days. Only the complainant gave evidence for the prosecution while the accused offered evidence in support of his denial and also called the medical officer, who examined the complainant.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to the count of Rape.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the 14 year old complainant. According to her, in the morning of the day of the incident, she went into a house along with her friends. She was later told that it belonged to the accused, and she saw him for the first time when he walked into the house.
- [6] In relation to the count of Rape, the complainant said, after some time the accused had "*kicked out*" one of the girls for calling her friends to open the door the accused had bolted. Then the accused went to the bathroom, wrapped himself with a towel, dragged the complainant into the room, ripped off her top, and told her to undress by threatening her that he would cut her breast off with a knife. Then he inserted his penis into her vagina for few minutes and she felt pain. She was slapped and kicked at by the accused.
- [7] She did not reveal this incident to her friends, who were sleeping in the sitting room, but reported it to the Police.
- [8] During her cross examination, the complainant admitted that she told she was raped by the accused; as she was away from her parent's house for the past two weeks without their knowledge, and her mother would be upset, if she learns that the complainant was in an Indian man's house.
- [9] There was another important inconsistency of the evidence of the complainant, which has been highlighted by the accused during cross examination. The complainant admitted in cross examination, what she told the Police is that the accused had a rolling pin at that time and not a knife as she said in examination in chief. She also admitted that she told about the knife for the first time in this Court and further admitted that what she said to Police is the correct version. She was unable to say what the accused did with the rolling pin.
- [10] The accused, in his evidence denied the charge and said that the complainant had fabricated the allegation of rape with the connivance of her friends to keep the accused away from his house enabling them to stay there. According to him, the Police came to his house upon a report made by the girl, who was chased by him. He also called Dr. Nikit Ram, who examined the complainant after about 12 hours, since the alleged act of Rape and found no injuries on her body or in the vaginal area. He opined that he would expect some injuries in the area if there was a forceful penetration.

- [11] The assessors have found the evidence of the accused and his witness as truthful and reliable, as they unanimously found the accused not guilty to the charge. They were directed in the summing up to evaluate the probabilities of the version of events as presented by the parties. The inconsistencies of the evidence of the complainant were highlighted with suitable cautions. The question of identity of the accused was also brought to their notice.
- [12] The three assessors have obviously rejected the evidence of the prosecution as unreliable. It was a question of believing whom.
- [13] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I concur with the opinion of the assessors.
- [14] The complainant clearly admitted that she made up this allegation of Rape, as she was fearful of the fact that her mother would be upset when she learns that her daughter was found in the house of an Indian man. The Police came unexpectedly to the house of the accused and therefore, it is probable that she made up this allegation of Rape against the accused. The medical evidence relied upon by the accused also supports the denial of the accused.
- [15] The inconsistency of the complainant; in relation to the knife and the rolling pin, further supports the fact that her evidence is unreliable, as if not for the knife, no realistic threat existed of cutting her breast off by the accused. She is unable to say what the accused did with the rolling pin and that negates the prosecution theory that her consent was obtained under threat of physical harm.
- [16] Therefore, it is my considered view that the evidence of the prosecution, presented through the complainant, is unreliable and also is insufficient to establish the elements of the offence of Rape beyond a reasonable doubt.
- [17] Accordingly, I acquit the accused, ANIL KUMAR, on the count of Rape.
- [18] This is the Judgment of the Court.



**ACHALA WENGAPPULI**  
**JUDGE**



**At Suva**  
**This 17<sup>th</sup> Day of October 2016**

***Solicitor for the State*** : ***Office of the Director of Public Prosecution, Suva***  
***Solicitor for the Accused*** : ***Legal Aid Commission, Suva***