

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 87 OF 2016

STATE

v

SAIYAD KHAN

Counsel : Ms D.S. Alagendra with Ms S. Navia for State
: Mr. J. Singh for Accused

Date of Summing Up : 1 November 2018

Date of judgment : 16 November 2018

(Name of the Complainant is suppressed. She is referred to as NN)

JUDGMENT

1. The accused is charged on the following Information and was tried before three assessors.

Statement of Offence

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

Particulars of Offence

SAIYAD KHAN on an unidentifiable date between the 1st day of December 2014 and the 31st day of March 2015 at Sigatoka in the Western Division inserted his penis into the vagina of NN, a child under 13 years.

2. Assessors unanimously found the accused 'guilty' of rape as charged.
3. Having reviewed my own summing up and evidence led in the trial, I have decided to accept the unanimous opinion of assessors. I proceed to give my reasons as follows.
4. To find the accused guilty of Rape in this case, the Prosecution must prove beyond a reasonable doubt that the accused penetrated complainant's vagina with his penis.
5. Prosecution called three witnesses, the complainant- NN, her mother Rehana and complainant's teacher. Prosecution's case is substantially based on the evidence of the complainant.
6. Complainant said that Saiyad grabbed her from the back, took her to his room, and forcefully pushed her on his bed. Complainant was crying out for help but no one could hear her because Saiyad was covering her mouth. He took off her sarwal trousers, took off his pants and forcefully put his penis into her vagina and had sex with her for ½ an hour. It was painful because it was her first time having sex with a man. She said that she was bleeding from her vagina. She was crying out for help. Saiyad told her not to tell the incident to anyone in her family and if she did he would slap her. After that she put on her clothes and went straight home.

7. I am satisfied that the evidence complainant gave in court is truthful and believable. The Court can safely act upon her evidence.
8. The Defence did not dispute the identity of the accused in the course of cross-examination. However, Defence Counsel in his closing address said that the Defence was disputing the identity of the accused.
9. The Court must be satisfied beyond reasonable doubt that it was the accused who had committed the alleged rape. The complainant said that she was raped by her first cousin Saiyad Khan. She said that Saiyad Khan was watching a movie on television with her and his mother at his house prior to the alleged incident. She further said that her cousin Saiyad was living in the adjoining flat.
10. The accused was known to the complainant from her childhood as her neighbour and cousin. I am satisfied that Saiyad Khan complainant described in her evidence is the accused person sitting in the doc. Prosecution proved the identity of the accused beyond reasonable doubt.
11. The complainant is consistent in her conduct with the allegation of rape. Evidence of the complainant and her mother confirms that the complainant was in a distressed and disturbed condition at school and home soon after the alleged incident. I am satisfied that her distressed condition is linked to the rape incident.
12. It is not disputed that the complainant became pregnant and that an abortion was done on her and that the allegation came to light upon the discovery of her pregnancy by her mother. The report was lodged with police by a Social Welfare officer in April 2016 when the incident was reported by complainant's teacher. There is a delay of approximately 12 months in reporting the alleged incident to police.
13. There is a reasonable explanation for the delay. The complainant said that she was scared to report the matter to anybody. She further said that her mouth was

blocked before the rape and that the accused told her not to tell anyone in her family, and if she did, he would slap her. Complainant's mother Rehana explained why she did not report the matter to police. She said that her husband's brother Ahmad Khan who is the decision maker of the family prevented her and her daughter from going to police. I am satisfied that the complaint complainant finally made to police is genuine and true although it was belated.

14. The accused and his family members had taken every effort to prevent the matter being reported to police. They had tried to influence the witnesses for Prosecution in various forms even after the trial had commenced. Those efforts taken by the accused's family indicate that the allegation is true.
15. The Defence case is one of total denial. They say that this allegation has been fabricated by the complainant to cover up her pregnancy. They say that complainant had ample time and opportunity to complain to her mother, aunty Jasmine or her teacher but she had not complained to anyone until her pregnancy was discovered by aunty Jasmine. They say that the reason why she did not complain was because this allegation was never true.
16. The Defence called Sherene to support Defence's case. Sherene said that the complainant and her mother did not respond positively to her suggestion to do a DNA test when the pregnancy was exposed.
17. Sherene had never given a statement to police as to what she uttered in court. The fact that Sherene had approached complainant's mother with a DNA test suggestion was never put to the complainant or her mother when they took stand. Sherene is accused's cousin. I am satisfied that Sherene lied to this court to save her cousin.
18. I observed the demeanor of the complainant. She was straightforward and confident. Her demeanour is consistent with her honesty.

