

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 176 of 2015

STATE

V

AMIT KRISHNA GOUNDAR

Counsel : Ms. S. Kiran for the State.
: Ms. N. Sharma with Ms. R. Nabainivalu for the
Accused.

Dates of Hearing : 14, 15 May, 2018
Closing Speeches : 16 May, 2018
Date of Summing Up : 17 May, 2018
Date of Judgment : 18 May, 2018

JUDGMENT

(The name of the complainant is suppressed she will be referred to as "SK").

1. The Director of Public Prosecutions charged the accused by filing the following information:

COUNT ONE

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence

AMIT KRISHNA GOUNDAR on the 14th day of June, 2015 at Nadi in the Western Division, penetrated the vagina of “SK” with his penis without her consent.

COUNT TWO

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to section 375 (2) (a) of the Crimes Act.

Particulars of Offence

AMIT KRISHNA GOUNDAR on the 14th day of June, 2015 at Nadi in the Western Division without lawful excuse and with intent to cause alarm to “SK” threatened the said “SK” with a cane knife.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of one count of rape and one count of criminal intimidation as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.
4. The prosecution called three (3) witnesses whilst the accused remained silent and did not call any witness.
5. The complainant informed the court that she was a student of Nadi Special School who lived at Mulomulo, Nadi with her mother, her step father the accused and her two brothers.
6. On 14 June, 2015 the complainant’s mother left home for work at 7am and the accused came home from work at about 8am. After a while the accused gave some money to her brothers to go to the shop to buy sweets the complainant was left in the house with the accused.

7. The complainant further stated that the accused inserted his private part into her private part. According to the complainant the accused opened her clothes and inserted his penis into her vagina. As a result of what the accused had done she felt bad that she had lost her virginity, the penetration was painful and blood had come out of her vagina. The complainant did not allow the accused to insert his penis in her vagina.
8. The complainant tried to go out of the house to tell someone about what the accused had done to her but the accused threatened her with a cane knife saying that he will chop her if she told anyone about what he had done to her. The complainant was afraid when she saw the cane knife.
9. Next day she went to school where she told her teacher Ranjini that she had told her mother what the accused had done to her but her mother did not believe her and had hit her with a comb. Upon hearing this, the teacher took her to the Head Teacher Reena.
10. The complainant informed the Head Teacher that the accused had raped her and then she explained what all had happened to her. Thereafter the teacher informed the Social Welfare Department and the complainant's father reported the matter to the police. The complainant recognized the accused in court.
11. The second prosecution witness was Ranjini Kumar the complainant's Class Teacher. This witness has been teaching at the Nadi Special School for the past 7 years the complainant was her student for the last 4 years in Vocational Girls Class. The complainant was intellectually impaired and a slow learner academically.
12. On 15 June, 2015 at about 9 am the witness was in school the complainant came late to school. She observed the complainant was in a mess, her hair

was untidy and her uniform in particular her top was not tucked in properly.

13. The witness asked the complainant why she came to school like that, she was informed that the complainant had a fight with her mother because she did not do some household chores. The witness further asked her if there was anything else she wanted to tell her but the complainant was not forthcoming so the complainant was referred to Pravin Reena Devi who was the Girl's Counselor. The reason for the referral was that the complainant was changing her story about what had happened.
14. The witness together with the Girls Counselor assured the complainant that whatever she tells them will not be shared with anyone. The complainant then told them that her mother had seen her with her step father that night that is why she had a fight with her mother in the morning.
15. The final prosecution witness was Pravin Reena Devi, a School Teacher at Nadi Special School who has 27 years of teaching experience out of which she spent 5 years teaching at the Nadi Special School. The witness was given the responsibility to be in charge of senior girls. On 15 June, 2015 the witness had a meeting with the complainant in the school.
16. The complainant was brought to her by the complainant's Class Teacher Mrs. Ranjini Kumar on that day she noticed the complainant's dressing was a mess not neat, her top was pulled out and her hair was not done properly as well.
17. The witness took the complainant to a separate room it took a long time for the witness to normalize the complainant to get her to say what had happened to her.
18. The complainant said that her father touches her private part when her mother was asleep and that he would come to her and also on Sunday 14th

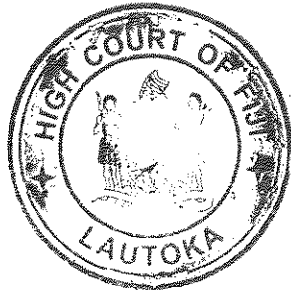
June while she was having her shower her father saw her naked and also her mother saw her with her father.

19. I accept the evidence of the complainant as truthful and reliable. The complainant was able to recall what had happened to her some three years ago. She was able to express herself clearly, was straight forward and forthright in her evidence.
20. The complainant was able to withstand cross examination and was not discredited. She was referred to her police statement given to the police when facts were fresh in her mind, the inconsistency was not significant which did not adversely affect the credibility and reliability of the complainant's evidence.
21. I have no doubt in my mind that the complainant told the truth in court, her demeanour was consistent with her honesty. I accept that the complainant was threatened by the accused that he will chop her with the cane knife he was holding if she told anyone about what he had done to her.
22. The next day when the complainant went to school she told her teachers what the accused was doing to her at home. The teachers confirmed in their evidence that the complaint was an intellectually impaired child who was a slow learner she would take her time to answer questions, pause, wait for a while, give a blank look and then answer. Furthermore, the complainant was a quiet and a reserved child who hardly shared anything with the teachers.
23. Since the complainant was a special needs child it was normal to expect that she would express herself by giving different versions of what had happened to the teachers. The most important thing is that she was able to relay the message that the accused had done something unlawful to her. There is no requirement of the law that a complainant has to disclose all the

ingredients of an offence but must disclose evidence of material and relevant unlawful conduct on the part of the accused. It is also 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 (*see Anand Abhay Raj vs The State, CAV 0003 of 2014*).

24. I accept that the complainant had told the School Teachers about the unlawful sexual conduct of the accused. The fact that she did not tell the School Teachers that the accused had raped her does not affect the credibility of the complainant's evidence.
25. I do not accept the defence suggestion that the complainant had a motivation to fabricate a story against the accused since he had scolded her on the day of the alleged offending and on one earlier occasion the accused had slapped the complainant because she had met her biological father without informing the accused or her mother.
26. I accept the evidence of all the prosecution witnesses as truthful and reliable. The defence has not been able to create a reasonable doubt in the prosecution case.
27. I am satisfied beyond reasonable doubt that the accused on 14 June, 2015 had penetrated the vagina of the complainant with his penis without her consent.
28. I also accept that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
29. I am also satisfied beyond reasonable doubt that the accused on 14 June, 2015 without lawful excuse and with intent to cause alarm to the complainant threatened the said complainant with a cane knife.

30. I agree with the unanimous opinion of the assessors that the accused was guilty of one count of rape and one count of criminal intimidation.
31. In view of the above, I find the accused guilty as charged and I convict him accordingly.
32. This is the judgment of the court.



Sunil Sharma
Judge

At Lautoka
18 May, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.