

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 44 of 2016

STATE

V

RINESH ANAND LAL

**Counsel** : Ms. Susan Serukai for the State  
Mr. Sunil Kumar for the Accused

**Dates of Trial** : 18-22 June 2018

**Summing Up** : 25 June 2018

**Judgment** : 26 June 2018

### JUDGMENT

[1] The accused, Rinesh Anand Lal, was charged with the following offence:

#### FIRST COUNT

##### *Statement of Offence*

RAPE: Contrary to Section 207 (1) and 2 (a) of the Crimes Act No. 44 of 2009.

##### *Particulars of Offence*

RINESH ANAND LAL on the 6<sup>th</sup> day of July 2014, at Nausori, in the Central Division, had carnal knowledge of KAUSHIK AKSHAY RAM, without his consent.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was held over 5 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a majority decision the three Assessors found the accused not guilty of the charge of Rape.
- [4] I have carefully examined the evidence presented during the course of the trial. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the Assessors and also the opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Sections 207 (1) and (2) (a) of the Crimes Act No. 44 of 2009 (Crimes Act).
- [6] The Assessors were directed that in order for the prosecution to prove the count of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
  - (ii) On the specified day (in this case on 6 July 2014);
  - (iii) At Nausori, in the Central Division;
  - (iv) Penetrated the complainant's anus, with his penis;
  - (v) Without the consent of the complainant; and
  - (vi) The accused knew or believed that the complainant was not consenting, or the accused was reckless as to whether or not he was consenting.
- [7] Each of the above elements were further elaborated upon in my summing up.
- [8] I informed the Assessors that in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to prove them. Therefore, that they must treat those facts as proved beyond reasonable doubt. Based on the said agreed facts the identity of the accused is proved as it has been agreed that 'The accused in this matter is one Rinesh Anand Lal.....' All the other elements of the offence must be proved by the prosecution beyond reasonable doubt.
- [9] In support of their case, the prosecution called the complainant, Kaushik Akshay Ram, his sister Sheenal Swastika Ram and Ashneel Nand.

- [10] The accused gave evidence in support of his case. He also called three witnesses on his behalf, namely WDC Anjaleen Kumar, Verenaisi Naivalu and Avneet Adarsh Kishore.
- [11] The complainant testified to the incident which took place on the night of 6 July 2014. He said that he had gone to Elvin's place and was drinking together with the accused, Avneet, Elvin and Shaneel Prasad. He had then wanted to pass urine. So he had asked his cousin Elvin where the washroom was. Elvin had directed him to the washroom by pointing with his hand. The complainant had then gone to the washroom.
- [12] The complainant then testified as to how the accused had come into the toilet and forcibly inserted his penis into the complainant's anus. He said that the accused had inserted his penis into his anus for about 15 to 20 seconds.
- [13] Within a minute or so his cousin Elvin had come into the toilet and pulled the accused out. The accused had run out of the toilet. Elvin had then taken the complainant out of the washroom (and made him lie down outside the washroom) and had pulled his pants up.
- [14] The complainant had then begged his cousin Elvin to drop him at home. Elvin had called his other cousin Avneet Nand and asked him to lift the complainant up and drop him at home. After Elvin and Avneet had helped the complainant get up, Avneet had taken him home. The complainant recalls the time was around 12.00 am.
- [15] When the complainant had arrived home everyone was sleeping. Therefore, he did not tell anyone about what happened at the time.
- [16] The next day when he woke up he was in a lot of pain. He was having a really bad body ache and pain. He was really scared, traumatized and embarrassed of the incident which took place the night before. He had also noticed two bite marks on his neck. So he decided to pack his bags and run away from home to his nursing school at Tamavua.
- [17] When questioned as to whether he recalls how those bite marks came on his neck, the complainant said he does not know, but the only person present in the toilet at the time was the accused.
- [18] The next morning (which would have been Monday the 7 July 2014), while the complainant was leaving home for the nursing school, he had met Ashneel Nand on his driveway. He had told Ashneel Nand that his four cousins, Rinesh, Avneet, Elvin and Shaneel had taken him to Elvin's house. He had shown Ashneel Nand the bite marks on



his neck and informed him of the incident which took place the night before. Ashneel Nand had advised the complainant to go and make a complaint to the Police. However, the witness had said no because the accused was related to him and because he was shy and embarrassed to complain to the Police.

- [19] After reaching nursing school the complainant had informed his close friends about the incident. He said he had confided in his close friends as he wanted to share his feelings with someone. The complainant testified that he had been emotionally traumatized by the incident.
- [20] Six days after the incident the witness had told his sister, Sheenal Ram, about the incident. He had been leaving to Nai Tuvatuvatu village in Tailevu for his 2 months of rural attachment. Prior to leaving he had told his sister about all what happened to him on the reception night. The complainant testified that he had wanted to tell his sister, who was 17 years old at the time, because he was scared that if an incident of this nature can happen to him, it can happen to his sister as well. This was due to the fact that most of his cousins come to his house on a regular basis.
- [21] About 3 weeks later, his mother had called and informed him that his sister, Sheenal Ram, had told her everything about the incident. His mother had advised him to come and report the matter to the Police. He had reported the matter to the Nausori Police on 19 August 2014.
- [22] In cross examination, the defence showed certain inconsistencies in the statement made by the complainant to the police. In his statement to the police the complainant has stated that "I got really drunk..." However, he denied this in his testimony in Court. He answered by saying that he drank only 3 bottles (of beer).
- [23] Furthermore, in his statement to the police the complainant has stated "I cannot recall as to who all penetrated my anus". However, in his testimony in Court he states that he only recalls the accused having done so.
- [24] The complainant denies that he made a second statement to the police (which was on 10 February 2015). Initially he denied that the signatures on the statement were his. The witness said that "It (the signatures) is circled. It is not my signature." However, later in cross examination he even denied that he made a second statement to the police.

- [25] The accused called Woman Detective Corporal (WDC) 2763 Anjaleen Kumar, as a defence witness. She is the Investigating Officer in this case. She confirmed that she recorded both statements of the complainant and that the signatures on the said statements was that of the complainant's.
- [26] However, the complainant has chosen to disown making a second statement to the police.
- [27] Ashneel Nand testified as to what the complainant had told him the morning after the alleged incident. When asked as to what exactly the complainant had told him about the incident, the witness said that Kaushik had told him that he had been molested by Rinesh. When asked as to what Kaushik meant when he said that he was molested by Rinesh, the witness said that the word Kaushik used was that he was raped by Rinesh. As for the love bites on his neck, he had said that these might have been made by Avneet Adash.
- [28] The complainant's sister, Sheenal Ram, testified that her brother had had told her about the incident which had happened to him (this was 6 days after the incident). "He told me that he was sexually abused by 4 people". When asked as to what he meant by sexually abused, the witness said that he was raped. The four people her brother referred to were Elvin, Shaneel, Avneet and Rinesh. He had said that the said 4 persons had sexually abused him after her cousin's (Avinesh Nand's) wedding.
- [29] She further testified that the next day after the incident, she had seen big love bites on Kaushik's neck. Kaushik was not really sure as to who made them. He had told her that it was one of her cousin's named Avneet, but he was not sure.
- [30] The accused categorically denies all the allegations against him. He also called three witnesses on his behalf, namely WDC Anjaleen Kumar, Verenaishi Naivalu and Avneet Adarsh Kishore.
- [31] Having considered the totality of the evidence in this case, I am the opinion that the prosecution evidence is not entirely credible and reliable.
- [32] It is clear that a majority of the Assessors too have not believed the evidence of the prosecution as entirely truthful and reliable, as they have by a majority decision found the accused not guilty of the charge.



[33] In my view, the majority opinion of the Assessor's is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the majority opinion of the Assessors.

[34] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Rape against the accused beyond reasonable doubt.

[35] In the circumstances, I find the accused not guilty of the charge of Rape and accordingly I acquit him of the said charge.

  
Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Dated this 26<sup>th</sup> Day of June 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitor for the Accused : Sunil Kumar Esquire, Suva.