

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 165 of 2015**

**STATE**

**V**

**ROHIT RIKASH CHAND**

**Counsel** : Ms. R. Uce for the State.  
: Ms. M. Sukanaivalu for the Accused.

**Dates of Hearing** : 25, 26, 29 April, 2019  
**Closing Speeches** : 30 April, 2019  
**Date of Summing Up** : 30 April, 2019  
**Date of Judgment** : 06 May, 2019

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**JUDGMENT**

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

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

**COUNT ONE**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act, 2009.

*Particulars of Offence*

**ROHIT RIKASH CHAND**, on the 14<sup>th</sup> day of August, 2015 at Nadi, in the Western Division, penetrated the vagina of “**DG**”, with his finger, a child under the age of 13 years.

2. The three assessors had returned with a unanimous opinion that the accused was guilty of one count of rape 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. When the matter was called on 1<sup>st</sup> May, 2019 for judgment to be delivered the accused did not appear so a bench warrant was issued. The accused is aware of the proceedings whose last appearance was on 30<sup>th</sup> April, 2019 he has breached his bail conditions and has waived his right to be present in court. This court cannot be waiting indefinitely for the police to execute the bench warrant and for the accused to appear.
4. The prosecution called three (3) witnesses whereas the defence called the accused and another witness to give evidence.
5. On 14<sup>th</sup> August, 2015 the complainant who was 8 years of age was returning home from town with her grandmother in a mini bus. While she was standing in the bus the boy who was sitting beside her grandmother asked her grandmother if the complainant could sit on his lap. Her grandmother agreed.
6. As the bus was travelling the complainant who was wearing a dress felt this boy touched her vagina with his finger from underneath her dress. He kept on touching her vagina throughout the journey. When this boy inserted his finger into her vagina she felt bad after the bus stopped near her house this boy quickly left the bus. The complainant was scared so she did not tell her grandmother what this boy was doing to her in the bus.

7. The complainant told her grandmother after she got off the bus. Her grandmother responded by saying it may have been by accident that he may have touched her. At home her grandmother informed the complainant's father. The matter was then reported to the police.
8. Sarda, the grandmother of the complainant informed the court that after doing some shopping in town she boarded the mini bus to go home with the complainant. Sarda had groceries on her lap the complainant was sitting beside Sarda inside the bus. After a while the accused came so Sarda made the complainant stand up so that the accused could sit.
9. Since the complainant was standing the accused asked the witness to let the complainant sit on his lap. The complainant sat on the lap of the accused, at about 3pm the bus stopped near their house. The accused got out first followed by the witness and the complainant. After the accused left, the complainant told the witness that the accused had put his hand inside her panty and was fingering her.
10. Dr. Terry Fesaitu on the date of the incident had examined the complainant at the Nadi Hospital. The specific medical findings by the doctor were:
  - a) Perforated hymen superiorly appeared erythematous;
  - b) No external bruising or laceration in surrounding area;
  - c) No bleeding noted.
11. The professional opinion of the doctor was that the perforated hymen/tear in the hymen in the patient's case can be explained by trauma. Trauma meant any force which acts on a surface which can be either sharp or blunt trauma.

12. The accused informed the court that he had gone for shopping on 14<sup>th</sup> August, 2015 with his mother at Nadi Town. After buying groceries they went to board the mini bus from the town end. When he entered the bus there was only one space available so he told his mother to sit in that space, however, he remained standing. The driver saw the complainant sitting at the back seat with her grandmother so the driver asked the grandmother whether she will pay the little girl's fare. The grandmother replied she will not pay the fare and then she told the girl to stand up. The accused then occupied the empty seat.
13. The accused had a lot of groceries in his hand so the grandmother shifted and made the girl stand beside her. He shifted so that the complainant could sit beside him. The complainant was sitting between the accused and her grandmother. After this the bus left the town.
14. The accused said his mother sat at the second last seat in the bus. The accused denied touching the complainant's vagina and penetrating her vagina with his finger.
15. The final defence witness was the mother of the accused Sarita Devi. She informed the court that she had gone shopping with the accused after work on the 14<sup>th</sup> of August, 2015. After shopping they boarded the Dominion Transport bus. The bus was full she was seated at the second last seat the accused was standing in the bus. After some time the driver saw the accused standing in the bus so he asked the grandmother whether she had paid the fare for the complainant.
16. The grandmother asked the complainant to stand up so that there was space for the accused to sit. The accused sat beside the grandmother and the complainant. The witness and the accused got off at the junction near their home. She spoke with the accused during the trip asking him whether the groceries in his hands were heavy. The accused replied it was okay he could take the groceries.

17. After carefully considering the evidence of the prosecution and the defence witnesses I accept the evidence of the complainant as truthful and reliable. I have no doubt in my mind that she told the truth in court, her demeanour was consistent with her honesty.
18. The complainant gave a coherent account of what the accused had done to her some 4 years ago. Furthermore, the complainant was able to withstand cross examination and she was forthright in her answers and not evasive.
99. During the cross examination the complainant was referred to some inconsistencies between her evidence in court and her police statement. I accept some inconsistencies were bound to arise considering the time lapse and in particular the complainant's age. The inconsistencies were not significant to adversely affect the reliability of the complainant's evidence.
20. The complainant promptly told her grandmother what the accused had done to her that is as soon as they got off the bus and after the accused had left. I accept the complainant was scared so she did not raise any alarm or tell her grandmother what the accused was doing to her in the bus.
21. The grandmother of the complainant had also told the truth when she narrated what the complainant had told her immediately after they got off the bus. The doctor also supported the version of the complainant and his findings were consistent with what the complainant had told him.
22. The accused denied committing the offence as alleged he took the position that the complainant had fabricated a story against him. The defence did not raise any motivation on the part of the complainant

to do so. This court rejects the assertion by the defence that the complainant had made up a story against the accused.

23. Furthermore, the accused and his mother did not tell the truth in court, from their demeanour it was obvious to me that the mother of the accused was trying to save her son from any problems. The accused was also not forthright in his evidence. The complainant and her grandmother were not cross examined by the defence about the presence of the second witness Sarita Devi in the bus, yet Sarita was called as a defence witness to say she was in the bus. The defence also did not cross examine the prosecution witnesses that the accused had entered the bus with his mother and he was carrying groceries in his hand which he had on his lap while in the bus.
24. I reject the evidence of the accused and his witness as unbelievable and implausible it was an afterthought to divert from the truth.
25. The defence has not been able to create a reasonable doubt in the prosecution case.
26. I am satisfied beyond reasonable doubt that the accused on the 14<sup>th</sup> August, 2015 penetrated the vagina of the complainant with his finger, a child under the age of 13 years.
27. I agree with the unanimous opinion of the assessors that the accused is guilty of one count of rape he is charged with.
28. In view of the above, I find the accused guilty of one count of rape as charged and I convict him accordingly.

29. This is the judgment of the court.



  
**Sunil Sharma**  
**Judge**

**Lautoka**

06 May, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs Iqbal Khan & Associates for the Accused.**