

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 140 of 2019

STATE

V

SN

Counsel : Ms. Sadaf Shameem for the State  
Mr. Amrit Chand with Ms. Ashnilta Shankar for the Accused

Dates of Trial : 15-19 June 2020

Summing Up : 23 June 2020

Judgment : 29 June 2020

*The name of the accused and the complainant are suppressed. Accordingly, the accused will be referred to as "SN" and the complainant will be referred to as "PD".*

## JUDGMENT

- [1] According to the Information filed by the Director of Public Prosecution (DPP), the accused, SN, was charged with the following offence:

### COUNT ONE

#### *Statement of Offence*

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

#### *Particulars of Offence*

SN, on the 24<sup>th</sup> day of March 2019, at Nasinu, in the Central Division, penetrated the vagina of PD, with his penis, without the consent of the said PD.

- [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 unanimous decision, the 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 unanimous opinions of the Assessors.
- [5] During my summing up I explained to the Assessors the salient provisions of Section 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 charge of Rape, they must establish beyond any reasonable doubt that;
- (i) The accused;
  - (ii) On the specified day (in this case the 24 March 2019);
  - (iii) At Nasinu, in the Central Division;
  - (iv) Penetrated the complainant's vagina, 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 she was consenting.
- [7] Each of the above individual elements were further elaborated upon in my summing up in respect of the charge.
- [8] In support of their case, the prosecution called the complainant, PD, her cousin brother Krishneel Kartik Kumar, and Medical Officer, Dr. Sokini Vakadraua. The prosecution also tendered the Medical Examination Report of the complainant as Prosecution Exhibit PE1.
- [9] The accused testified on his own behalf and also called a witness Shelvin Chand in support of his case.
- [10] In terms of the provisions of Section 135 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act"), the prosecution and the defence have consented to treat the following facts as "*Agreed Facts*":
1. The Accused is SN, 26 years old of Sakoca Settlement, Nasinu.
  2. On the morning of 24<sup>th</sup> March 2019, a male Fijian of Indian descent came to SN's house, and stated that he was a Police Officer.

3. SN was interviewed under caution and charged at the Valelevu Police Station.

- [11] I directed the Assessors that since the prosecution and the defence have consented to treat the above facts as *"Agreed Facts"* without placing necessary evidence to prove them, they must therefore, treat the above facts as proved beyond reasonable doubt.
- [12] I have summarized the evidence of all witnesses during the course of my summing up.
- [13] The complainant was 22 years old at the time of the alleged incident, and was 23 years old when she testified in Court (Her date of birth being 1 September 1996). She testified as to how she and her friends Zainal and Feroz went to the Desi Haze Night Club, late in the evening of 23 March 2019.
- [14] At the Night Club she had been drinking rum and cola with her friends. She had also danced with her friends. While dancing, she testified as to how her ex-boyfriend Shelvin Chand had come and tried to talk to her. After initially refusing to talk to him, she had later spoken to him.
- [15] Thereafter, she said that Shelvin had asked her to go to his place. She had agreed. Accordingly, around 4.00 in the morning, she had left the Night Club with Shelvin, in a taxi. The witness said: "I went to Shelvin's house by taxi. Shelvin and other friends were in the taxi – two other friends. I later came to know one of their names as SN."
- [16] They had reached the house, which Shelvin had said was his house. She had been tired as she had been doing her assignments late nights, because she was taking four full units. So she said she had gone to bed and slept. Shelvin had guided her to the bedroom.
- [17] When she went to the bed to sleep she was alone. She didn't know about the others. After going into the bedroom the door was kept open. She had just gone off to sleep. When asked the time, the witness said that when they left the club it was after 4.00 a.m. She said another half an hour later, she went to bed. So which means, when she went off to sleep it was around 4.30 in the morning.
- [18] She testified that she was woken up around 6.00 in the morning. When she woke up, she saw a boy on top of her. He was facing towards her – so definitely he was on top of her and he was fully naked. She also was also fully naked. She was shocked to see a stranger on top of her and she could feel his penis inside her vagina. When asked whether she had seen that person any time before that day, the complainant said no it was the first time.
- [19] Later she testified as to how she went on to identify the person on top of her as the accused.
- [20] The complainant also testified as to how she had contacted her cousin brother, Krishneel Kartik Kumar, who is a Police Officer, and requested him to come and rescue



her. As per the testimony of Krishneel Kumar he had received this phone call from the complainant around 6.45 a.m. on 24 March 2019. He then testified as to how he had gone and met the complainant, who was with her friend Shahil at the time. Thereafter, he testified as to how he went with the complainant and Shahil to the accused's house.

- [21] In this case, the accused testified on his own behalf. He totally denies the charge of Rape against him. He totally denies that he was on top of the complainant when she woke up on the morning of 24 March 2019, or that he penetrated the complainant's vagina with his penis as set out in the Information.
- [22] According to the accused he had returned to his home in Sakoca around 7.20 - 7.30 in the morning of Sunday 24 March 2019. This position is further corroborated by the testimony of Defence Witness Shelvin Chand.
- [23] Furthermore, Shelvin Chand clearly testified that at the time he left the Night Club with the complainant by taxi, in the morning of 24 March 2019, it was only he and the complainant who had left the Night Club. The accused had not joined them. He had remained in the Night Club.
- [24] It is important to note that Shelvin Chand was originally listed as a witness for the prosecution. He is the ex-boyfriend of the complainant. However, since he was not called by the prosecution to testify, the defence called the said Shelvin Chand as a defence witness.
- [25] At the conclusion of the evidence and after the directions given in my summing up, the three Assessors by their unanimous opinions have found the accused not guilty of the charge of Rape.
- [26] In my view, the Assessors' opinion is justified. It was open for them to reach such a conclusion on the available evidence. Therefore, I concur with the unanimous opinions of the Assessors.
- [27] 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.
- [28] In the circumstances, I find the accused not guilty of the charge of Rape and accordingly acquit him of the charge.



  
Riyaz/Hamza  
JUDGE  
HIGH COURT OF FIJI

AT SUVA

Dated this 29<sup>th</sup> Day of June 2020

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitors for the Accused : Amrit Chand Lawyers, Suva.