

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 06 of 2016

STATE

V

AMITESH VIKASH CHAND

Counsel : Ms. R. Uce and Ms. S. Naibe for the State.
: Mr. I. Khan and Mr. T. Kaloulasulasu for the
Accused.

Dates of Hearing : 06, 07, 10 August, 2020
Closing Speeches : 11 August, 2020
Date of Summing Up : 11 August, 2020
Date of Judgment : 13 August, 2020

JUDGMENT

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

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

FIRST COUNT

Statement of Offence

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

Particulars of Offence

AMITESH CHAND on the 7th of December, 2015, at Sigatoka in the Western Division penetrated the vagina of “AK” with his fingers without her consent.

SECOND COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

AMITESH CHAND on the 7th of December, 2015, at Sigatoka in the Western Division unlawfully and indecently assaulted “AK” by sucking her breast.

THIRD COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212(1) of the Crimes Act 2009.

Particulars of Offence

AMITESH CHAND on the 7th of December, 2015 at Sigatoka in the Western Division, indecently and unlawfully assaulted “AK” by kissing and biting her stomach.

2. The three assessors returned with a unanimous opinion that the accused was not guilty of the offence of rape, or the lesser offence of attempt to commit rape, and the accused was also not guilty of the offences of sexual assault and indecent assault by a majority of two is to one as charged.
3. I adjourned to consider my judgment. I direct myself in accordance with my summing up and the evidence adduced at trial.

4. The prosecution called the complainant and the defence called the accused.
5. The complainant informed the court in 2015 she was employed by the Fiji Revenue and Customs Authority as an Attaché at the Sigatoka Branch. On 7th December she was at work, at around 9am the other two officers namely Shelly and Neli left the office for banking.
6. The complainant was left with the accused and both were serving the taxpayers at the office counter the accused kept asking the complainant when the taxpayers will be leaving the office. When the complainant asked why he was asking, the accused did not respond.
7. From the silence of the accused the complainant sensed that the accused had some bad intentions. After a while all the taxpayers left the office, at this time, the complainant stood up and went to the main door to go outside since she thought the accused might do something to her. As soon as she reached the main door and tried to open it the accused came and grabbed her hand and pulled her into the office.
8. The accused held her tightly from behind and started kissing her neck, came in front kissed her lips and cheek. The complainant tried to push the accused but she could not. The accused then lifted the complainant's top and bra, sucked her breast and made a love bite on her stomach.
9. While the accused was doing all this, the complainant kept telling the accused to stop and that she will report the matter to the police. The accused did not stop at this time he tried to penetrate his finger in her vagina from on top of her tights and panty after lifting her skirt. The complainant felt the accused fingers in her vagina.
10. The complainant tried to push the accused and remove his hand but she could not. The complainant started to cry, the accused then left her. When

Shelly and Neli came into the office the complainant was still crying, the accused told them that one taxpayer had scolded her. The complainant told the accused to tell the truth that he had done something to her, at this time the accused left the office.

11. The complainant narrated the entire incident to Shelly and it was Shelly who wanted the matter to be reported to the police but the complainant stopped her since she was only an Attaché in the office and this was the first week of her attachment.
12. Next day Shelly took the complainant to the Sigatoka Police Station to report the matter. According to the complainant Shelly had forced her to report the matter. The reason why the complainant did not want to report the matter was because she did not want her parents to know since this was her first employment and she needed the money to support her family. If her parents knew about the incident they will ask her to stay home.
13. The complainant did not shout because there was no one in the office and the main door was closed so no one would have heard her.
14. Moreover, the complainant also informed the court that when the accused had seen her crying he offered her money. The complainant told the accused she will report the matter to the police or if he was willing to marry her after what he had done because he was the first person to have touched her without her consent.
15. The complainant did not consent to what the accused had done to her when he was doing all these things she was angry, she did not expect this from the accused who was an Assessor at the Fiji Revenue and Customs Authority.

16. On the other hand the accused informed the court in 2015 there was an Attaché position available at the Fiji Revenue and Customs Authority, Sigatoka Branch. The complainant had applied for the position by hand delivering the application to the accused. The complainant had been in contact with the accused over mobile phone and landline, finally the complainant was accepted.
17. On 7th December when the office was empty the accused held the hand of the complainant from behind since this wasn't the first time they had physical contact in the office.
18. Both started talking the accused stood up and started to kiss the complainant who responded several times. The accused caressed her body, sucked her breast and she was in his arms and he did make a love bite on her stomach. All these were done with the consent of the complainant.
19. The complainant lied to the court when she said that the accused had put his fingers in her vagina over her tights and panty. After the accused and the complainant had finished kissing each other he heard someone coming in the office so he quickly let her go and sat at his table. The complainant went and sat at Neli's desk.
20. The accused saw the complainant was embarrassed and she was taken to the kitchen by the two colleagues. The accused did not hear what they were talking about. The accused denied penetrating the vagina of the complainant with his fingers. He had only kissed her, sucked her breast and made a love bite on her stomach because she had consented.
21. The following week the accused was asked to go to the police station which was on the 15th December in between the complainant and the accused were talking to each other in the office and over the phone and that he told the truth in court.

22. According to the accused he was talking with the complainant from the first day the complainant had applied to work as an Attaché. On the day of the incident at no time had the complainant and the accused talked about having sexual encounter in the office. From the time the complainant commenced work and until the day of the incidents he had hugged and kissed the complainant several times in the office which was the truth. Despite not being not allowed to do touching or kissing in the office they did it.
23. The accused agreed that he had asked the complainant several times when the taxpayers would be leaving the office because he wanted to be alone with her.
24. The accused denied sucking the breast of the complainant, kissing and biting her stomach without her consent. The accused also denied lifting her skirt and penetrating his finger in the complainant's vagina. The accused further stated that when the complainant was seen crying by the other staff he had to say that the complainant got a growling from the taxpayers.
25. The accused said this because the complainant was embarrassed so when the other staff saw her he had to make that excuse. The accused denied he had offered the complainant some money for her not to report the matter to the police.
26. The accused agreed that he was questioned by the police in respect of the allegations but he did not give his answers voluntarily he also agreed that he had told the police he had touched the complainant's private part but he didn't do that.
27. After considering the evidence adduced by the prosecution and the defence, I accept the evidence of the complainant as truthful and reliable. I have observed her demeanour in court which was consistent with her honesty.

The complainant was also forthright in her evidence and was not discredited during vigorous cross examination. The inconsistency that she was referred to during cross examination was insignificant which did not adversely affect her credibility. I have no doubt in my mind that the complainant told the truth.

28. I accept the explanation given by the complainant about why she did not want to report the matter to the police, at that time she was only an Attaché and the day of the incidents was her first week of her first employment and she needed money to support her family, once her parents would come to know about the incidents she would be told to stay home.
29. She had also proposed to the accused to marry her since it was the first time someone had touched her without her consent. In my judgment considering the circumstances of the complainant she had no option but to desist from reporting the matter to the police until Shelly intervened. Although the complainant was forced to report the matter to the police it does not create any doubt on her credibility.
30. In any event the complainant had told the accused to stop otherwise she will report him to the police did show an intention on her part to report the incidents to the police at one point in time.
31. On the other hand, I do not accept the accused told the complete truth it is untenable that he was having physical contacts with the complainant in the office (which was not allowed) from the time she started work as an Attaché which was only one week before the incidents. I accept the complainant did not have any relationship with the accused prior to joining employment and during the one week she was working as an Attaché. The accused did not tell the truth when he said the complainant had consented for him to kiss, suck her breast and make a love bite on her stomach.

32. If the complainant had indeed consented and was not crying then there was no need for the accused to tell Shelly and Neli that a taxpayer had scolded her. The defence during the trial did not raise any motivation on the part of the complainant to implicate the accused other than saying that she had lied in court. The accused did not tell the truth when he denied penetrating the vagina of the complainant with his fingers. I also reject the accused evidence that he did not voluntarily give his answers when questioned by police about the incidents because he was under pressure from the police. The accused told the truth when he told the police that he had touched the private part of the complainant which was contrary to what he told the court. This gives credence to the evidence of the complainant that the accused had penetrated her vagina with his fingers which she had felt.
33. On the totality of the evidence the accused version is not plausible. The defence has not been able to create a reasonable doubt in the prosecution case.
34. This court is satisfied beyond reasonable doubt that the accused on the 7th of December, 2015 had penetrated the vagina of the complainant with his fingers without her consent. This court also accepts that the accused knew or believed the complainant was not consenting or didn't care if she was not consenting at the time.
35. This court is also satisfied beyond reasonable doubt that the accused on the 7th of December, 2015 had unlawfully and indecently assaulted the complainant by sucking her breast, kissing and biting her stomach without her consent.
36. For the above reasons, I overturn the unanimous opinion of the assessors that the accused is not guilty of the offence of rape as charged. I also overturn the majority opinion of the assessors that the accused is not guilty of the offences of sexual assault and indecent assault as charged.

37. In view of the above, I find the accused guilty and convict him for one count of rape, one count of sexual assault and one count of indecent assault as charged.
38. This is the judgment of the court.


Sunil Sharma
Judge



At Lautoka
13 August, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs Iqbal Khan & Associates for the Accused.