

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CAE NO: HAC 187 OF 2022

THE STATE

vs.

MANOJ KUMAR

Counsel : Mr. J. V. Singh for State
Ms. L.M. Ratidara with Mr. B.Singh for Defence

Dates of Hearing: 1, 2 November 2022
Date of Judgment : 4 November 2022

(Name of the Complainant is suppressed. She is referred to as KK)

JUDGMENT

1. The accused was charged on the following information filed by the Director of Public Prosecutions.

COUNT ONE

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, assaulted KK by slapping and punching her face, thereby causing her actual bodily harm.

Count 2

Statement of Offence

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

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, penetrated the mouth of KK with his penis, without her consent.

Count 3

Statement of Offence

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

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, unlawfully and indecently assaulted KK, by making love bites on her thighs.

Count 4

Statement of Offence

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

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, penetrated the vagina of KK, with his fingers, without her consent.

Count 5

Statement of Offence

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

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, had carnal knowledge of KK, without her consent.

Count 6

Statement of Offence

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

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, ad carnal knowledge of KK, with his penis, without her consent.

Count 7

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to section 375(1) (a) (i) (iv) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

MANOJ KUMAR on the 23 rd day of May 2022 at Cunningham in the Central Division, without lawful excuse threatened to kill KK, with intent to cause alarm to KK.

2. The accused pleaded not guilty to the counts. At the ensuing trial which lasted for two days, the Prosecution presented the evidence of the complainant and two other witnesses including that of the doctor who had examined the complainant. At the end of the Prosecution case, the accused was acquitted on count 3 because the complainant did not say that the accused made love bites on her thighs although the medical report shows some fading bruises on her upper inner right thigh. In respect of the other counts, the accused was put to his defence. Upon his rights being explained, the accused elected to give evidence under oath. At the end of the Defence case, the Court heard oral submissions from both counsel. Having carefully considered the evidence presented at the trial and the respective submissions, I now proceed to pronounce my judgment as follows.
3. The Prosecution must prove all the elements of each count beyond a reasonable doubt. That burden never shifts to the accused at any stage of the trial. The accused is presumed innocent until he is proven guilty.
4. On count one, the accused is charged with Assault Causing Actual Bodily Harm contrary to Section 275 of the Crimes Act. The Prosecution must establish beyond reasonable doubt that the accused, Manoj Kumar, assaulted the complainant, KK, and thereby caused her actual bodily harm.
5. On count two, the accused is charged with oral Rape. The Prosecution must establish that the accused, Manoj Kumar, penetrated the mouth of the complainant, KK, with his penis, without her consent and that the accused knew or had reasons to believe that the complainant was not consenting or he was reckless as to whether she was consenting or not.
6. On count four, the accused is charged with digital Rape. The Prosecution must establish that the accused, Manoj Kumar, penetrated the vagina of the complainant, KK, with his fingers, without her consent and that the accused knew or had reasons to believe that the complainant was not consenting or he was reckless as to whether she was consenting or not.
7. On count five, the accused is charged with carnal knowledge (vaginal Rape). The Prosecution must establish that the accused, Manoj Kumar, penetrated the vagina of the complainant, KK, with his penis, without her consent and that the accused knew or had rea-

sons to believe that the complainant was not consenting or he was reckless as to whether she was consenting or not.

8. On count six, the accused is charged with carnal knowledge (anal Rape). The Prosecution must establish that the accused, Manoj Kumar, penetrated the anus of the complainant, KK, with his penis, without her consent and that the accused knew or had reasons to believe that the complainant was not consenting or he was reckless as to whether she was consenting or not.
9. A slightest penetration is sufficient to prove the element of penetration.
10. On count seven, the accused is charged with Criminal Intimidation. The Prosecution must establish beyond reasonable doubt that the accused Manoj Kumar without lawful excuse, threatened to kill the complainant, KK, with intent to cause alarm to KK.
11. I would now summarise the salient parts of the evidence led in the trial which I consider relevant to my analysis.

Case for Prosecution

The Complainant (KK)

12. Complainant is 34 years of age and she works as a front line cashier at Vinod Patel Nadi. She currently resides in Nadi. She is married to Manoj Kumar (Manoj), the accused, for three years. She took a transfer to Nadi Branch just after the incident alleged in this case.
13. In May 2022, complainant was staying at Cunningham Stage 1 with Manoj. On 23 May 2022, she returned from work in the afternoon at around 5.30 p.m.. Nobody was home at that time. Manoj had gone somewhere without informing her. He returned home at around 7. 05 p.m. As Manoj entered the house, he locked the door from inside. He was drunk and stinking of beer. She was so frightened when she saw his red eyes. She told him to go and have a bath. He said he drank a lot and reminded her that it was their wedding anniversary. He had already cooked a biriyani for dinner.
14. When she asked him to take a shower for her to serve the dinner, he started punching her on her face, lips and eyes. Her head was banged badly. He also strangled her neck for 5 seconds to the extent that she was not able to breathe properly or shout. Blood was flowing out from her lips. She shouted for help but nobody came for help. She asked for water but he did not give her water. This incident took place in the sitting room on the sofa.
15. When he drinks alcohol, he gets mad and wild and throws punches at her. It was not the first time he had behaved like this. She kept on bearing but this time she could not bear it anymore.
16. Then Manoj forcefully took her to the bedroom. He took off her clothes without her consent. She was wearing still her uniform- collar t-shirt, and a skirt. He was wearing a pair of shorts and a round neck t-shirt. She said she was not ready for it because she knew, when he gets drunk, the things that can happen. But, he forcefully dragged her to the bed and started to sexually assault her.
17. Firstly, he put the two fingers inside her vagina. It was really painful. When Manoj was putting his fingers he was sitting on the bed. He took the shaving machine from the sitting room and shaved the pubic hair of her private area. Then he put it inside her vagina

and on the side when it hit on her skin. It was really painful too. Then he penetrated her vagina with his penis 5 times. She told him to stop it but he did not listen. After that, he penetrated her mouth with his penis. He insisted that she open a big mouth to send it inside. She could not take it. She kept on shouting. Then he punched her on face again and warned her not to shout. She said she shouted because it was paining. After that, he put his penis on her anus.

18. He again started to penetrate her mouth with his penis. He did this 4 or 5 times. She was just lying on the bed. He kept on doing these things repeatedly several times while taking breaks in between. He put his penis into her anus again and penetrated her vagina with his penis and with two fingers. She could feel it because they went inside.
19. She told him to take her to the hospital because her head was in pain. He said he will take her but he never took her to the hospital. She kept on crying. She was just lying down on the bed looking up at the ceiling.
20. She was just lying on the bed. He took quiet a long time, nearly 3 hours for the assault, saying he was not satisfied. When he was done, she went to have a bath and went to sleep at around 12.30 a.m. He threatened her that if she reported to police he will chop her into pieces and kill her so she won't be able to go to the police station but will just go straight to the mortuary. He could not shout but kept on crying.
21. Then he boiled water and made her sit on warm water when she told him that her vagina and anus were really painful. The tube light was shining the house. He ate food left. He also gave her a tablets to eat.
22. On 30 May 2022, she reported the mater to Valelevu Police Station. Police officers took her to the Valelevu Health Centre for a medical examination because they saw her face swollen. The delay in reporting was due to two reasons, firstly she could not walk properly and she had a headache, and secondly, she was really scared that if she did report, he will kill her. The second day after the incident also, he told her if she went to the station he'l kill her and put her inside the mortuary.
23. At the Health Centre, she was attended to by a medical practitioner. Firstly she was attended to by one male doctor. She told the male doctor that her body got some love bites. Then he wanted her to be examined by a female doctor. When the female doctor Priya, examined her after 10 p.m. She told the doctor that she was sexually assaulted and raped. Then she took off her clothes, and the doctor saw that she got some bruises on her thigh, like designs.
24. The same day, after the medical examination, the police took her home for her to take her clothes and she did not stay in that house any longer.
25. Describing her relationship with Manoj after the marriage, she said they lived happily, but when he got drunk, he is completely a different man.
26. Under cross-examination by Ms. Ratidara, the complainant agreed that, after coming back home from work at 5.30 p.m., she was relaxing on the sofa till 7.05 pm. and was still in uniform. She said, on that particular day, Manoj locked the door from inside too early unusually. She agreed that Manoj's parent's house is just separarted from the tin-corrugated iron. She denied that there was an argument that night that she had not cooked

dinner, making Manoj angry. She said that Manoj himself had already cooked the food. She denied that, during the argument, she had pushed him and he had pushed her back and that her finger nails had hit his left eye making him angry to punch her.

27. She denied that, on the following morning, she was still angry and that she had screamed at him and that she had tried to punch him again. She denied having refused his offer to go to hospital. She agreed that Manoj had asked about her breakfast and that he had made porridge for her; she had informed him that she wanted to eat porridge because she was not able to eat properly. She didn't go to work on that particular day because she was not feeling okay. She informed her boss and texted the company *Viber* group that she was unable to report to work because her face was swollen. She agreed that she reported to work on 25 May 2022 and, after work, did not return home.
28. Complainant denied having told the doctor that Manoj 'fisted' her. She said she told the doctor what Manoj did to her; that she was assaulted on her face; that she was raped and that his two fingers went inside her vagina. She told the police that Manoj used the shaver on her. She could feel that she had cuts on her vagina after the shaver was used. When Manoj saw blood coming out from her lips, he brought a bowl of warm water and told her to take a wash inside the basin.
29. Complainant agreed that she was in a conversation with Detective Clare after she was seen by Doctor at the Valelevu Health Centre in which she told Clare that there was no vaginal examination done on her, doctor only examined her body but not the vagina.
30. Under re-examination, she said that she went to work on 27th and did not return home and went to her cousin's place. She told the doctor about fingering and showed her fist to the doctor.
31. WDC Clare received the medical report of the complainant on 30 May 2022. She confirmed that she received a complaint from the complainant that her vagina was not examined by the doctor when she was taken to Valelevu Health Centre.
32. The police photographer Inoke Tuiloaloa tendered the photo booklet that depicts the crime scene.
33. Dr. Priya Nandini Lal
Dr. Priya is a MBBS qualified General Practitioner with 2.5 years' of experience. When she was based at the Valelevu Health Centre, she examined the complainant at 10 30 p.m. during her night shift on 30 May 2022. The report she prepared (PE- 2) was tendered in evidence. Her initial impression of the patient was that the patient was self-mobilized, oriented to time, place and person. The patient spoke full sentences, seemed not confused, not in pain or distress.
34. She took the history from the patient and did a visual genital examination. She did not do the speculum or insert her fingers to the patient's private parts. She just had a visual look of the patient with the torch to see around the genitalia. She could not notice any laceration, cut or any swelling in her private part. Only thing she could note was that the patient had bruises on her right upper inner thigh which was almost fading away. That was the only prudent finding she got. She opined that, generally, it takes 5-7 days for fading.

35. The patient had been presented to her after 7 days of the alleged sexual assault and it is common assumption that there be no lacerations on the body by that time. However, according to the history provided, there should have been some sort of injuries or lacerations present. If a married woman, who has been sexually active is presented for examination number of days after the incident, she would not expect to see injuries or laceration on patient's genitalia. However, it all depends on the mechanism of injury/ how the patient was assaulted.
36. Under Cross Examination by Ms. Ratidara, the doctor said that everything the patient told about the history was noted down in her report. As per D10, the patient had relayed to her that 'she was sexually assaulted by putting his fist in her vagina'. She knew the difference between fisting and fingering. Even in case of fisting, she would not expect to see virginal tears because vagina inside is elastic. She would expect to see, even after 7 days, some injuries on the opening of vagina if the penetration had been forceful. She did not however fully examine the anus. If she were to see anal injuries or vaginal injuries, on its lips, whilst the patient's genital area was being examined, she would have noted it down in her report. If there had been a force penetration on the anus, she would expect to see some injuries or swelling in the anal area. But she did not observe any such injury upon the visual examination. She did not observe any head injuries or cuts on patient's lips.

Case for Defence

Manoj Kumar (Accused)

37. On 23 May, 2022, Manoj went to have a few drinks with his friends at CDP yard. 3 or 4 of them drank 6 bottles of Fiji Bitter, 750ml long neck. After having drinks, he came home. The door was open. He came inside and locked the door. His wife was sitting on the sofa using her phone. He went to check if there was any food cooked on the gas stove. He saw nothing. He came back and asked her why she didn't cook. She just ignored him at first. Than he asked her again and she said '*if you want to eat, you can cook and eat*'. He said '*if you came home you should have cooked something for me*'. So the argument got heated up, she swore at him and he swore at her. She got up and pushed him. He pushed her in return. Her finger nails went into his left eye and tears started coming out from his eyes. That's the time he punched her in her face twice. She fought back, slapped him and punched him.
38. After the fight, he went to bed while she was sitting on the Sofa. Actually the fight didn't end there. She was still swearing at him telling '*you can go and die*'. She slept on the Sofa the whole night. The next morning, she started arguing and fighting again. He got hold of her and made her sit down. She wanted to eat porridge so he made porridge for her. After breakfast, he asked her if she wanted to go to the hospital or the station to report. She ignored him and said 'no' to his offer. If she went to the station, she said, they will have send her for a medical, than she had to go to the station. He said '*it's up to you*'. He proposed that if she decided to go to the station, he can take her. But she replied 'no'.
39. On the 24 May 2022 she did not go to work. She went to his brother's place and spent the whole day with brother's wife. On 25th she went to work. On 26th and 27th she never came home. She returned home with police on 30 May 2022 when the officers from Valelevu Police Station came to arrest him.
40. Manoj denied that he punched her. He denied having engaged in any of the forceful sexual activities his wife told in Court. He denied that she shouted or cried. If she did, his parents and brothers, who were staying 3 or 4 yards away, would have heard.

41. Under cross-examination by Mr. Singh, Manoj admitted that he was unemployed at the time of the alleged incident and that he used to cook every day because his wife did not know how to cook. But on 23 May 2022, he did not cook because he was having grog and drinks with friends in the afternoon. He admitted that he did not complain to anyone or state in his caution statement that her fingernails hit his eyeballs. He agreed that his wife had bought a shaving gear for him but denied having used it on her.

42. That, is the case for Defence.

Analysis

43. The Prosecution substantially relies on the evidence of the complainant. To support the version of the complainant, the Prosecution called doctor Priya who had conducted the medical examination. I bear in mind that in Fiji no corroboration is required to prove a case of sexual nature. The case turns on who told the truth in Court. However, even if I reject the version of the defence, the burden is still on the Prosecution to prove each charge beyond reasonable doubt. If a reasonable doubt is created in my mind as to the guilt of the accused, I must find the accused not guilty and acquit him.

44. There is no dispute as to the identity of the accused. The parties agree that the complainant is the wife of the accused.

45. The accused admits that he was drunk and that he slapped the complainant twice after a heated argument on 23 May 2022, over dinner. It was said that the slapping was in self-defence. The accused vehemently denies having done any of the sexual acts spoken of by the complainant. The defence is one of total denial.

46. The Defence says that the complainant did not tell the truth so her evidence must be rejected. According to the evidence of the complainant, she had not complained to anybody until he lodged the complaint with police on 30 May 2022 that was seven days after the alleged incident. The Defence says her conduct is not consistent with that of a rape victim.

47. The complainant gave two explanations for the delay. She said she could not walk properly and she had a severe headache after the assault. The second reason is that she was threatened with death if she reported. As for the first explanation, the accused admitted that his wife did not go to work on the 24th and that he made porridge because she could not eat and having offered her to be taken to hospital. It was not disputed that she had informed her company that she was unable to report to work because she had a swollen head.

48. She admitted that she was reporting to work from 25th onwards. Why then she did not report the matter to police or anybody until the 30th? That behaviour should be tested against the circumstances in this particular case. According to her, after the repeated assaults, she had been threatened not to report or else she will be chopped into pieces and put her in the mortuary. This warning had come after a physical assault (slapping) admitted to have been done by the accused. The death threat had been repeated even two days after the incident.

49. The accused is not a stranger to her. He is her own husband whom she described as a good man unless he got drunk. Once got drunk only, he goes mad and wild. Reporting her own husband for a rape, which at one time was never considered a crime, to police would certainly have been a serious decision for a wife to take. She was living under the same roof and the threats had been serious and continuous. That would have been the reason she never returned home after lodging the report on 30 May 2022.
50. The conduct of a rape victims is highly unpredictable. Some of them may go and complain at the first available opportunity. Some may not. There is no stereotype for rape or victims of rape. The explanations given for the delayed reporting in this case are reasonable and acceptable.
51. The same explanations are good to explain complainant's behaviour that she had not screamed aloud to ring alarm. In this case, the complainant said she in fact shouted and cried. But no one had come to her help. He had threatened her and warned not to shout. Although it was suggested that his parents and brothers were living close by, there is no evidence that they were present home when the alleged incident occurred. The defence counsel indicated that the accused did not intend to call any of his relatives despite the early indication that he would call them. It has to be conceded that the accused does not have to prove that complainant's conduct was not plausible. That burden was on the Prosecution. However, the claim of the accused that the complainant after the alleged incident had stayed the whole day at his brother's place with brother's wife could have been supported easily if they were called.
52. The main contention of the Defence was that the complainant's evidence is not consistent with the medical evidence adduced by Dr. Priya. According to Dr. Priya the only visible sign of injury or bruising was that that found on complainant's inner right upper thigh. It was also in the process of fading.
53. Doctor's observation comes as no surprise to me. She had examined the complainant seven days after the alleged incident. The doctor agreed that bruises will heal in 6-7 days' time. The only visible injury the complainant said she suffered is the cut on her lips. However, the complainant had wanted the male doctor (to whom she was first presented) to examine the love bites on her thighs. But the male doctor was reluctant to examine the so called love bites thus wanted her to be examined by a female doctor.
54. It is obvious that a bruise or a cut on the lips is likely to heal very fast leaving no marks on the lips after 7 days. Doctor Priya observed some fading bruises on complainant's upper inner right thigh, like designs. This observation is consistent with the love bites the complainant wanted the male doctor to examine.
55. Doctor Priya had done only a visual genital examination even after her being relayed a history of a sexual assault and more specifically 'by putting fist in her vagina'. According to doctor's own evidence, as per the history provided, she had expected to see some sort of injuries or lacerations being present on patient's genitalia. In such a scenario, it is surprising that the doctor had not done a speculum or at least inserted her fingers to the patient's private part to examine her for vaginal injuries. The doctor just had a visual look of the patient with the help of a torch to see 'around' the genitalia.
56. The fact that the doctor had not done a proper vaginal examination is consistent with detective Clara's evidence. Clara had received a complaint from the complainant just after

the medical examination about the inadequacy of doctor's genital examination. It is not for a doctor who was called upon to examine an alleged rape victim to come to court and say that she could not notice any laceration, cut or swelling in the private parts of the patient after having done only a visual examination.

57. The doctor opined that if the patient is a married woman, who has been sexually active and presented for examination number of days after such an incident, she would not expect to see injuries or lacerations on patient's genitalia. However, she added a qualification and said it all depends on the mechanism of injury/ how the patient was assaulted.
58. The Defence contended that the history relayed by the complainant is not consistent with her evidence that she was vaginally penetrated with fingers. In the history (D10) as recorded by the doctor in her report states 'sexually assaulted by putting fist'. The doctor said that she did know the difference between fingering and fisting and that what was noted down in her report reflects everything the patient had told her.
59. It is trite rule of evidence that a previous consistent statement of a witness cannot be called in aid to show the consistency of that witness unless it comes under the exception –'recent complaint' in a case sexual nature. Therefore, the State is not allowed to rely on the history as it was not intended to prove a recent complaint. However, a previous statement made by the complainant to a doctor can certainly be used by the Defence to contradict the version of the complainant.
60. The question is whether the complainant's evidence in court is inconsistent with her previous statement to the doctor on material particular. I am not convinced that the argument of the Defence on this point is sound. The complainant maintained that she specifically stated to the doctor that she was vaginally penetrated with two fingers. In the process of communication however, she had shown her fist to the doctor to describe the nature of the assault. The doctor it seems had noted that "sexually assaulted by putting fist". I cannot see any material inconsistency there.
61. Even in case of fisting, the doctor said she would not expect to see vaginal tears because vagina inside is elastic. However, doctor said she would expect to see, even after 7 days, some injuries on the opening of vagina if the penetration had been forceful. There is no evidence that the complainant fought with the accused and offered physical resistance. She had merely submitted herself to the threat verbally and physically (punching on face) coming from the accused although she did protest and indicate to the accused in clear terms that she was not ready for sex that particular night because he was drunk and stinking beer. She had every reason to say 'no' to sex because she knew, from her past experience, how he would behave when he is drunk.
62. The doctor had not examined the anus of the complainant at all. It was suggested that, whilst the patient's genital area was being examined, the doctor would have noted if the complainant had any anal injuries. However, the doctor had done only a visual examination of the genital area so I am not convinced that such a superficial examination would have discovered any injury in the annul cavity. On the other hand, the complainant said that the accused withdrew from annul penetration after a few seconds when she started to scream in pain. In such a scenario it is possible that the complainant never got any injury on her anus.

63. The evidence of the doctor does not provide any tangible assistance to this court to solve the issue on penetration either of vagina or anus. However, the fact that the medical report (prepared on the basis of a belated examination) does not lend any support for complainant's claim does not mean that she was never raped anally, orally or vaginally.
64. The complainant said the assault started at around 7 p.m. and it lasted till mid night. It was suggested that it was implausible that a sexual activity could last that long. She explained how that considerably long period of time was spent. According to her, he had engaged in almost all types of sexual activities on earth, sometimes taking intervals in between, for example to grab the shaving gear from the sitting room. He was drunk and had expressed his desire to have long term sex, saying he was not satisfied.
65. There is no plausible suggestion from the Defence as to why not single but a series of allegations of sexual nature were made by the complainant against her husband whom she described as a 'good man when he was sober'. If she wanted to get even with him for punching on her face, she would not have wanted to fabricate such a long story.
66. I carefully observed complainant's demeanour in Court. Her conduct in Court was consistent with that of a genuine rape victim. She was straightforward in her answers and was not evasive. Having considered the totality of the evidence of the complainant and her demeanour in court, it is my considered view that her evidence is credible and reliable. Her conduct is consistent with that of an honest rape victim.
67. The accused does not have anything to prove in this case. Still, he opted to give evidence on oath and exposed himself to cross-examination. He denies all the allegations. However, he admitted slapping the complainant twice in her face after drinking alcohol. He said he slapped the complainant in self-defence when she started punching him. She flatly denied assaulting him.
68. The complainant is a slim woman whereas the accused appeared to be a strong man with a good built. It does not appear that she was capable of punching the accused requiring him to defend himself as he claimed. Furthermore, the accused admitted that he made no complaint to police that he was also assaulted by his wife or his eye ball was hit with her finger. Why didn't he complain and come up with his own defence at the earliest if he was really assaulted?
69. The accused admitted that he locked the door from inside as soon as he entered the house. He failed to explain why he locked the door as early as 7 p. m.. His evidence is that he got annoyed when he found that his wife had not cooked dinner. At the same time, he admitted that he was unemployed and it was he that was tasked to cook food. He further said she did not know how to cook. She said he had already cooked biryani that night. He failed to explain why she was expected to cook dinner only that particular night when he knew she did not know how to cook.
70. Accused's evidence is consistent in many parts with that of the complainant except for the events that took place after she had asked her to go and have a wash as he was stinking beer. He has a real interest in the defence case in that he had to save his own skin. His evidence is not appealing to me. The evidence of the Defence is thus rejected. His evidence does not create any doubt in the already established Prosecution case.

71. The rejection of Defence evidence does not mean the accused should be guilty of the offences charged. In this case the Prosecution proved each charge beyond a reasonable doubt.
72. It has to be accepted that in Fiji there is no need to corroborate the evidence of the complainant to prove a charge of sexual nature. The evidence of the complainant, if believed, is sufficient to bring home a verdict of guilt. In view of the unshaken evidence of the complainant in this case, it is proper in my opinion to act upon her evidence and find the accused guilty, even in the absence of strong medical or other supporting evidence.
73. The accused's acts of punching the complainant's face, lips and eyes, banging her head and also strangling her neck to the extent that she was not able to breathe properly do constitute the offence of Assault Causing Actual Bodily Harm. Penetrating complainant's mouth, vagina and anus without her consent constitute the offence a Rape as charged in counts 2, 4, 5 and 6 respectively of the information. The act of threatening the complainant that he will chop her into pieces, kill her and put in the mortuary constitutes the offence of Criminal Intimidation.
74. The Prosecution proved counts 1, 2, 4, 5, 6 and 7 beyond a reasonable doubt. I find the accused guilty on counts 1, 2, 4, 5, 6 and 7.
75. The accused is convicted accordingly.

Aruna Aluthge

Judge

4 November 2022

At Suva

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence