

IN THE RESIDENT MAGISTRATE'S COURT OF FIJI
AT NAVUA

Criminal Case : 150/2012

STATE
VS
VICTOR HOYT

For Prosecution : Sgt. Lenitasi
For Accused : Ms. Priya Lal from Legal Aid

Judgment

- [1] The accused was initially charged with two counts of Indecent Assault contrary to section 212 (1) of the Crimes Decree No. 44 of 2009. Since the victim is 14 years old female the prosecution requested her name to be suppressed and therefore would be known as Ms. XY in this Judgment.
- [2] The accused pleaded not guilty to the charge and this matter was set down for hearing on 19 March 2013. Before the hearing the prosecution filed an amended charge under section 70(3) of the Criminal Procedure Decree which read as follows.

AMENDED CHARGE

REPRESENTATIVE COUNT

Statement of Offence (c)

INDECENT ASSAULT :- Contrary to Section 212(1) of the Crimes Decree 2009.

Particulars of offence (d)

Victor Hoyt , sometimes between the 1st day of April 2012 and 31st day of April 2012, at Wainadoi , Navua in the Central Division, on two occasion unlawfully and indecently assaulted XY by touching her vagina.

- [3] The prosecution called 05 witnesses (03 civil witnesses and 02 police officers) and for the defence only the accused gave sworn evidence.

Summary of Evidence

- [4] PW1, Miss. XY was the complainant in this case. She said the accused is her step father and they went to Wainadoi to attend a wedding. Her mother went back and whilst she was sleeping in the night she felt the accused slipping his hand inside her trouser and touching the vagina. Next day she told her mother and the accused apologized to her telling that he thought that was her mother. He repeated the same thing in her house. That day she had a stomach pain and the accused opted to massage her belly. Whilst doing that again he touched her vagina. She reported these to her aunt and she reported them to the police.
- [5] In cross examination PW1 said she reported about them to her mother but as she did not take any actions she reported to her aunt. Also she said the accused used to kiss her on lips and she did not like that too. When the second incident happened in her house her mom was there but she was lying in the bed and could not see that.
- [6] PW2 was Sokoveti Vaubula, the mother of the victim. She said she went with the accused and PW1 to Wainadoi. She did not stay there for the night and came there on Sunday morning. PW1 told her that the accused tried to hug her in the night and when she asked from the accused he said he thought that was PW2. When the next alleged incident happened in her house she was with them. She also said normally she and the accused kiss the victim on her lips. In cross examination she said when the second incident alleged to happen she was sitting next to them and could see what was happening. She also denied the accused touched victim's vagina at that time.
- [7] PW3, Iva Caku was the aunt of the victim. She is the wife of the pastor and victim used to come to their church. The victim came there early 2012 and told her everything. Victim told her that that the accused was treating her like a wife and her mother was telling her to kiss him. Also twice he touched her private parts.
- [8] PW4, DC 2930 Iliiesa conducted the interview of the accused and it was tendered as Ex-01.
- [9] PW5, WPC 3003 Katrina was the charging officer and she tendered the charge statement as EX-02.
- [10] The prosecution thereafter closed their case and being satisfied with evidence I gave the accused his rights as per section 179 of the Criminal Procedure Decree. The accused opted to give sworn evidence.
- [11] The accused said in Waindoi he was sleeping and accidentally put his hand in PW1's private part. He thought that was his wife and as soon as he realized his mistake

took his hand out. He apologized to PW1 and after his wife came back asked for forgiveness. He also said he normally kisses his wife and Pw1 in lips and they had no objection. Next time she had some pain her chest and he massaged her and denied touching her vagina on that time. He also said he treated PW1 as his daughter and she never complained.

- [12] The defence did not call any other witnesses and also closed their case. Both parties asked for time to file closing submissions which I granted but up to now the defence has failed to tender them to this Court. Therefore I have opportunity to only go through the prosecution's submission.

The Law

- [13] The accused was charged with the offence of Indecent Assault contrary to section 212(1) of the Crimes Decree which states:-

"A person commits a summary offence if he or she unlawfully and indecently assaults any other person.

- [14] Indecent Assault has been defined in Blackstone's Criminal Practice (1993 Edition) at paragraph B3.84 as follows:- **" The test for indecent assault is primary objective. An indecent assault is defined as assault committed in circumstances of indecency. Spoken words may constitute circumstances of indecency on the part of the person using them.**

If the circumstances of the assault are incapable of being regarded as indecent , the assault cannot become indecent because of some secret motive of the accused.

Where the circumstances are such that the assault could be considered indecent, it must at least be proved that the accused intentionally assaulted the victim with knowledge of the indecent circumstances or being reckless as to the existences of them. This means intention or recklessness with regards to circumstances which are shown to contravene standard of decent behavior with regard to sexual modesty.....whether or not the victim appreciate the fact of the indecency is irrelevant."

- [15] Based on the section 212(1) of the Decree the elements the prosecution needs to prove are:-

[a] the accused

[b] unlawfully and indecently assaulted the victim

[16] Section 58 (2) of the Crimes Decree states that this burden must be proved beyond reasonable doubt by the prosecution. This is consistent with the famous dictum of Viscount Sankey L.C in Woolmington V DPP [1935] A.C. 462 where he said :- "***no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the accused, is part of the common law. Where the burden of proof, remains on the prosecution throughout the trial, in that circumstance, the accused need only to raise sufficient evidence to cast reasonable doubt on the issue.***"

[17] In State v Seniloli [2004] FJHC 48; HAC0028.2003S (5 August 2004) her Ladyship Justice Shameem in her summing up said :

"The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused persons before you express an opinion that they are guilty. If you have any reasonable doubt as to whether the accused persons committed the offence charged against each of them on the Information, then it is your duty to express an opinion that the accused are not guilty. It is only if you are satisfied so that you feel sure of their guilt that you must express an opinion that they are guilty. One of the defence counsel asked you if you had the slightest doubt about the accused's guilt. That is not the correct test. The correct test is whether you have any reasonable doubt about the guilt of the accused."

Analysis of Evidence

[18] PW1 in her evidence said that the accused indecently assaulted her twice during the period mentioned in the charge. First instance arose while she was sleeping in Wainadoi. The accused also admitted in his evidence that he touched her that night. But his defence was that it was done mistakenly (thinking that it was his wife) and as soon as he knew it he took his hand off. The Court is not prepared to accept this claim by the accused as he knew very well that his wife was away from that place.

[19] Second occasion happened in her home. While massaging the victim the accused again touched her private part which the accused denied. This denial was also confirmed by PW2. Even though this witness (mother of the victim) was called by the prosecution I believe she was trying to shield the accused from the allegation as he was her husband. Therefore I would not put much weight regarding her evidence.

[20] Now I would turn to victim's evidence in this Court. I am mindful that presently there is no need for any corroboration of the complaint's evidence in sexual offences. This is clearly stated in section 129 of the Criminal Procedure Decree.

“Where any person is tried for an offence of a sexual nature, no corroboration of the complainant’s evidence shall be necessary for that person to be convicted; and in any such case the judge or magistrate shall not be required to give any warning to the assessors relating to the absence of corroboration.”

[21] Therefore even without any supporting evidence this Court can find the accused guilty for this offence based solely on the complainant’s evidence. I have considered the demeanor of parties in the Court and have no reason to doubt PW1 who I consider as a truthful witness. Also main witnesses for the prosecution were consistent with each other. Only deviation was PW2 who as mentioned above was trying to save the accused.

[22] As mentioned above there is no need for corroboration of the victim’s evidence. But in this case I find that there are some statements which would support her. Generally a statement made by a witness outside the Court can’t be used to corroborate his/her evidence in Court. One exception to this is a recent complaint and in this case I find that there were some recent complaints that would support her version.

[23] First instance was when the victim made a complaint to her mother about the incident happened in Wainadoi. Even though the mother was giving favorable evidence for the accused she also confirmed this.

[24] Second occasion she complained to her aunt, PW3 about the incident happened in her home. She would have taken this step as she may have felt her mother was taking the accused’s side in these incidents. All these complaints corroborate PW1’s evidence in the Court and enhance her credibility.

[25] For the reasons mentioned above I am prepared to accept the prosecution’s evidence in this case.

[26] Therefore I decide that the prosecution has proved beyond reasonable doubt that the accused committed these two offences against Miss. XY between 01 April 2012 and 31 April 2012.

[27] I find the accused guilty for this charge and convict him accordingly.

[28] 28 days to appeal.

24 June 2013

H. S. P. Somaratne
Resident Magistrate