

Appellate Jurisdiction

Criminal Appeal No. 39 of 1982

000367

Between:

GULENDRA PRASAD alias RAVINDRA
PRASAD s/o DULAI RAM

and

REGINAM

Mr. V. Maharaj for the Appellant
Mr. S. Singh for the Respondent

JUDGMENT

This appeal was allowed at the conclusion of the hearing when the conviction and sentence entered against appellant were set aside. The reasons for judgment were reserved to be given later and this I now proceed to do.

Appellant was on his own plea convicted of incest contrary to section 178 of the Penal Code and was sentenced to three years' imprisonment. He was not legally represented at his trial.

The particulars of offence alleged that on 9th November 1981 at Lami appellant had sexual intercourse with Sumintra Devi d/o Dulai Ram, who is and was to his knowledge his sister.

At the hearing of the appeal it became very evident after appellant's father had given evidence pursuant to section 320(1) of the Criminal Procedure Code that appellant

and the complainant who were alleged to be brother and sister in fact have no blood relationship. The fact was that complainant's father was an Indian by race and her mother was a Fijian and indeed the complainant herself strongly reflected her racially mixed parentage with her Fijian stock showing a little shade stronger. What had happened was that the complainant had been taken into the family by appellant's parents, both Indian by race, when she was still an infant and the arrangement was necessitated by the untimely death of complainant's parents. Although no legal adoption as such of the complainant was effected her new "parents" registered her under their names as their own daughter under the Births, Deaths and Marriages Registration Act. Since then complainant grew up with and became very much part of the family which for her part she also regards as very much her own. To her adopted parents' credit she has been treated and well cared for as a member of the family all these years. She is now eighteen.

The essence of the offence of incest is that sexual intercourse between persons related by affinity within the forbidden degrees such as that between a brother and sister must be proved. In the present case as has been noted there is no relationship by affinity between appellant and complainant and for this reason the conviction entered against appellant could not be sustained.

In the result the appeal was allowed and the conviction and sentence set aside.

Suva,
16th June 1932.

(T.U. Tuivaga)
Chief Justice