

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 051/2012**

**BETWEEN** : **THE STATE**

**AND** : **JOSEFA CAKAU**

**COUNSEL** : **Mr L Fotofili for the State**  
**Ms L Raisua for the Accused**

**Dates of Trial** : **17-19/03/2014**

**Date of Summing Up** : **20/03/2014**

**Date of Judgment** : **21/03/2014**

[Name of the victim is suppressed. She will be referred to as M.T]

**JUDGMENT**

[01] **JOSEFA CAKAU** has been charged with the following charge on information dated 24<sup>th</sup> February, 2012.

**FIRST COUNT**

*Statement of Offence*

**RAPE:** Contrary to Section 207(1) and 207(2) (b) of the Crimes Decree No: 44 of 2009.

*Particular of Offence*

JOSEFA CAKAU on the 09<sup>th</sup> day of January 2012, at Moti Street, Samabula, in the Central Division, penetrated the vagina of M.T with his finger without her consent.

- [02] The three assessors have expressed unanimous opinion that the accused is not guilty of the charge of Rape. The unanimous opinion is completely tenable on the basis of evidence considered in accordance with the legal directions that have been made.
- [03] According to the victim, she kissed the accused when the accused kissed her first on 09/01/2012. Both were hugging each other and touched each other's private part. The accused touched her vagina and inserted his finger into her vagina and victim touched his penis. This happened on the road. The victim said that she would not have reported the matter to police if the accused had said that he really feel for her. The victim had already kissed the accused in the year 2011. Both had intimate relationship since 2011.
- [04] The police officer who recorded the caution interview statement of the accused admitted the allegation pertains to this case was not put to the accused at the time of recording his caution interview statement.
- [05] Accused admits that he inserted his index finger into victim's vagina with consent. He did so while both were hugging and touching each other. He confirmed that the victim had touched his penis when he inserted his finger into her vagina. The accused reiterated that he inserted his finger into her vagina with consent. The only reason the victim lodged a police complain as he said to her that he can't accept her love at that moment.
- [06] The evidence presented by the prosecution clearly suggests that the accused had the consent when he inserted his finger into victim's vagina. The offence of rape is made out only if there was no consent from the alleged victim.
- [07] After careful consideration of the evidence presented by prosecution, it is very clear that the incident had happened with the consent of the victim.

[08] Hence, I agree with the assessors and find the accused is not guilty of the charge of Rape contrary to Section 207(1) and 207(2) (b) of the Crimes Decree No: 44 of 2009. He is acquitted accordingly.

P Kumararatnam  
JUDGE

At Suva  
20/03/2014

