

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

**CRIMINAL CASE NO: HAC 087/2011**

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

**AND** : **JOSEVATA MASALA**

**COUNSELS** : **Mr L Fotofili with Ms J Fatiaki for the State**  
**Mr A Vakaloloma for the Accused.**

**Dates of Trial** : **30/06 & 01-03/07/2014**  
**Date of Summing Up** : **04/07/2014**  
**Date of Judgment** : **07/07/2014**

[Name of the victim is suppressed. She will be referred to as L.B.]

**JUDGMENT**

[01] The above named accused has been charged with the following charges on amended information dated 30/06/2014.

**FIRST COUNT**

**Statement of Offence**

**RAPE:** Contrary to Section 150 of the Penal Code, Cap 17.

**Particulars of Offence**

Josevata Masala, between the 1<sup>st</sup> of February and 28<sup>th</sup> of February, 2009 at Nasinu in the Central Division, had carnal knowledge of L.B. without her consent.

## SECOND COUNT

### Statement of Offence

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

### Particulars of Offence

Josevata Masala, between the 1<sup>st</sup> of May and 31<sup>st</sup> of May, 2010 at Nasinu in the Central Division, had carnal knowledge of L.B. without her consent.

## THIRD COUNT

### Statement of Offence

**ATTEMPT TO COMMIT RAPE:** Contrary to Section 208 of the Crimes Decree No.44 of 2009.

### Particulars of Offence

Josevata Masala, on 12<sup>th</sup> March 2011 at Nasinu in the Central Division, attempted to have carnal knowledge of L.B. without her consent.

- [02] After the trial the assessors unanimously returned with not guilty verdict against the accused in respect of all three counts.
- [03] I direct myself on my own summing up and on looking at the evidence in it's entirety I accept the assessors' majority not guilty opinion.
- [04] In this case the victim gave evidence first. According to her she was raped by the accused since 2009 in the absence of the inmates of the house. Whenever accused forced her, he pushed her on to a bed and had sexual intercourse forcibly. Although the accused had sexual intercourse for about 2 years in the house where the victim's Aunty stayed, the victim did not take endeavour to inform this to her. Further the incident came to light when her cousin Ivamere saw the accused pulling the victim on 13/03/2011. Until such time, the victim kept it secret from others. At all relevant time several people were in the house both in Nadera and Cunningham Place. According to the victim

Jethro's parents also stayed in the house at Nadera. The victim nowhere in her evidence said that the accused threatened her before or after having sexual intercourse.

- [05] The accused took up the position that he had sexual intercourse with the victim with her consent. He admitted this in his caution interview statement.
- [06] The paramount duty of the prosecution to prove the accused guilty beyond reasonable doubt. It is not for the accused to prove his innocence. The burden of proof lies on the prosecution to prove the accused guilty beyond reasonable doubt, and that burden stays with them throughout the trial.
- [07] After careful consideration of the evidence presented by prosecution, it is very clear that the victim had consented for sexual intercourse. The victim was 18 years when she started to have sex with the accused. She has continued for about 2 years before she was caught by her cousin. I find the prosecution had not proved their case beyond reasonable doubt. The benefit of doubt must accrue to the accused.
- [08] Hence, I agree with the assessors and find the accused is not guilty of two counts of Rape and one count of Attempt Rape. He is acquitted accordingly.



P Kumararatnam  
**JUDGE**

At Suva  
07/07/2014