

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 63 OF 2012

STATE

-v-

USAIA MASIWALE

Counsels : Ms. L. Latu for the State
Ms. L. Raisua for the accused

Date of Trial : 4 August 2014-6 August 2014
Date of Summing Up : 6 August 2014
Date of Judgment : 6 August 2014

JUDGMENT

1. The Accused is charged under following count:

COUNT 1

Statement of Offence

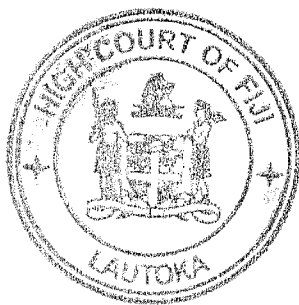
RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No.44 of 2009

Particulars of Offence

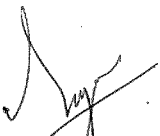
USAIA MAISIWALE, on the 8th Day of April 2012 at Tavua in the Western Division, penetrated the anus of NACANIELI NAISAU with his penis without consent.

2. The first assessor found the accused Guilty of the offence while 2nd and 3rd assessors found the accused Not Guilty of the offence.

3. Obviously, the majority of the assessors have not accepted the prosecution's version of events. It appeared that they have found the prosecution had not proven its case beyond a reasonable doubt. There were inconsistencies in the evidence of the prosecution witnesses. There is no support from the medical evidence. The accused had taken up an alibi in his caution interview and given evidence on same lines. His mother also gave evidence supporting his alibi.
4. I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
5. In my view, the assessor's majority verdict was not perverse. It was open for them to reach such conclusion on the evidence.
6. It is Judge's duty to listen to the view of the community when it comes to a conflict of version of events.
7. In this case, the assessor's majority verdict is not binding on me. However, on careful assessment of the case, I am prepared to accept their majority Not Guilty verdict on the count of Rape and give the accused benefit of the doubt.
8. I accept the assessor's majority verdict and I find that the prosecution has not proven its case against the accused beyond reasonable doubt.
9. I find the accused Not Guilty as charged on the count and acquit him accordingly of that count.
10. This is the Judgment of the Court.



At Lautoka
6th August 2014


Sudharshana De Silva
JUDGE

Solicitors : Office of the Director of Public Prosecution
Legal Aid Commission for the Accused