

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 055 OF 2014LAB

STATE

V

UMESH CHAND

Counsels : Ms. A. Vavadakua for State
Mr. A. Kohli for Accused

Hearings : 15 and 16 June, 2015

Summing Up : 17 June, 2015

Judgment : 17 June, 2015

JUDGMENT

1. The three assessors have returned with a mixed verdict. Assessor No. 1 had found the accused Not Guilty as charged. Assessors No. 2 and 3 had found the accused Guilty as charged.
2. Obviously, the majority had accepted the prosecution's version of events. The minority had not accepted the prosecution's version of events.

3. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors today.
4. The verdict of the majority and the minority of the assessors were not perverse. It was open to them to reach such conclusion on the evidence.
5. Assessors are there to assist the trial judge come to a decision on the guilt or otherwise of the accused. The final decision on whether or not the accused is guilty or not guilty, belongs to the trial judge and the trial judge alone. The trial judge is not bound to conform to the opinions of the majority or minority of the assessors.
6. In this case, I have heard the complainant's evidence. I have also heard the accused's sworn evidence. The photo of the hotel bed, on which the alleged offence was committed was tendered as Defence Exhibit No. 1. The photos of the bed was taken by police on 17.6.14, at 3.15pm or thereabout. The complainant said they had sexual intercourse on the bed for 10 minutes. Yet the bed appeared not to have been used. Ten minutes of sexual activity would have disturbed the bed sheets.
7. Furthermore, the complainant said she was bleeding from her vagina slightly on 17.6.14. Ten minutes of sexual activity on the hotel bed would have left some blood stains on the white sheets of the hotel bed. None was seen in the bed photos.
8. The complainant admitted in cross-examination that she was medically examined on 17.6.14. She admitted that the doctor found no evidence of recent sexual intercourse when he examined her vagina.
9. The prosecution is required to prove the accused's guilt beyond a reasonable doubt. The matters mentioned above does cast a reasonable doubt on the accused's guilt, and the benefit of that doubt goes to the accused. I have heard the complainant and the accused. In my view, the prosecution had not done enough to prove beyond reasonable doubt the guilt of the accused. In my view, there was a reasonable doubt on his guilt, and I accept the minority opinion of the assessors, as a result. I reject the majority opinion of the assessors.

10. Given the above, I find the accused Not Guilty as charged and I acquit him accordingly.

11. Assessors thanked and released.



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JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Kohli & Singh, Barrister & Solicitor, Labasa**