

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 252 OF 2013**

**STATE**

**vs**

**SEMI RAIQISO**

**Counsels : Ms Kumar D. for the State**  
**Mr Nainima W. and Ms Choy C. for the Accused**

**Dates of Trial : 18<sup>th</sup> and 19<sup>th</sup> April 2016**

**Summing Up : 20<sup>th</sup> April 2016**

**Judgment : 21<sup>st</sup> April 2016**

*Name of the Complainant is permanently suppressed and will be referred to as A.B.*

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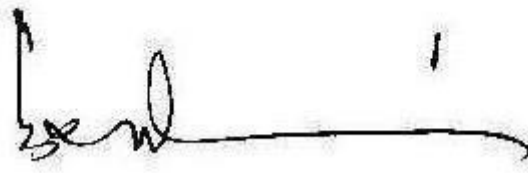
**JUDGMENT**

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**[1]** The Accused, Semi Raiqiso is charged under Section 44 read with section 207(1), (2)(a) of the Crimes Decree No. 44 of 2009 for Attempted Rape.

- [2] He pleaded not guilty to the charge and the ensuing trial lasted for 3 days. Only the complainant has given evidence for the prosecution while the accused opted to exercise his right to silence.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to the count of Attempted Rape.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily only on the evidence of the complainant. According to her, on the day of the incident, the accused having called her into his work place, had taken her to a toilet, and had then removed her clothing after locking the door. He has touched the complainant's breasts and tried to put his penis into her vagina.
- [6] She complained the incident to her aunt, then to Police and also on the same day to the medical officer who examined her vagina.
- [7] The accused in his cross examination suggested to the complainant that her allegation of attempted rape is not true and he had merely touched the breast of the complainant, with her consent. The complainant denied the suggestion. However, she admitted in cross examination that she had complained to Police of vaginal penetration by the accused. She also admitted that she did not reveal the incident to her aunt when she questioned her for the first time. She also admitted that she has said in her version of events only when her twin sister told their aunt that the complainant's uncle had confronted the accused, and the complainant was apprehensive of the fact whether the accused would reveal what happened between them.
- [8] They were directed in the summing up to evaluate the probability of the version of events as spoken to by the complainant, in giving her evidence. The inconsistencies of the prosecution were also highlighted. Their attention was also drawn to the fact that the DPP initially charged the accused for Rape, based on her complaint to Police and later, with amended information, charged the accused for Attempted Rape after the complainant's examination in chief was over.
- [9] The assessors have found the evidence of prosecution unacceptable and unreliable.
- [10] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I concur with the opinion of the assessors.

- [11] Considering the nature of all the evidence before the Court, it is my considered opinion that the prosecution has failed to prove its case beyond reasonable doubt by adducing truthful and reliable evidence, satisfying all elements of the offence, with which the accused is charged.
- [12] In the circumstances, I acquit the accused, Semi Raiqiso from the count of Attempted Rape.
- [13] This is the Judgment of the Court.



Achala Wengappuli  
JUDGE



**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitors for the Accused** : **Legal Aid Commission, Suva.**