

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

**CRIMINAL CASE: HAC 187 OF 2013**

**BETWEEN** : STATE

**AND** : JEREMAIA KALOKALO

**Counsel** : Mr. A. Singh for State  
Mr. M. Fesaitu for the Accused

**Date of Hearing** : 26th and 27th of April 2016

**Date of Closing Submissions** : 27th of April 2016

**Date of Summing Up** : 27th of April 2016

**Date of Judgment** : 2nd of May 2016

**JUDGMENT**

1. The accused person is charged with one count of Rape contrary to Section 207(1) and (2) (a) of the Crimes Decree. The Particulars of offence are that;

*“Jeremaia Kalokalo Tuisawau on the 22nd day of September 2013 at Nadi in the Western Divison penetrated the vagina of Karalaini Liku, with his penis, without her consent”*

2. The accused person pleaded not guilty for this offence, hence the matter was set for hearing. The hearing was commenced on 26th of April 2016 and proceeded till 27th of April 2016. The prosecution called three witnesses to prove the charge against the accused person. The accused person gave evidence on oath, but did not call any other witnesses for his defence. Subsequently, the learned counsel for the prosecution made his closing submissions, and was followed by the closing submissions of the counsel of the accused person. At the conclusion of the respective closing submissions of the parties, I made my summing up.

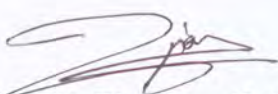
3. The three assessors returned with unanimous verdict of not guilty for the accused person. The assessors' verdicts were not perverse. It was open for them to reach such conclusion based on the evidence presented during the course of this hearing.
4. Having carefully considered the evidence adduced during the course of the hearing, the respective closing submissions of the parties, the summing up and the verdict of the three assessors, I now proceed to pronounce my judgment as follows.
5. The prosecution alleges that the accused entered into a house where the victim and her boy friend was sleeping in the early morning around 4 a.m. of 22nd of September 2013. He found that his wife, the victim and her boy friend were sleeping half naked in the bed room. He then chased the boy friend and assaulted the victim. He then forcefully had sexual intercourse with the victim. The victim then reported the matter on the following morning. The victim and the accused have been legally married and have six children from their marriage. Both of them admitted that at the time of this alleged incident took place, they had been separated and were living separately.
6. The accused person denied the allegation. He was at Narere in the night of 21st of September 2013 with his children. He was called by the victim and told him that she was tired and going to one of her aunt's house. He then went to that place to see her, where he found that she had never come to that place. He then went to his house at Navatulevu. He found his wife, the victim and her boy friend were sleeping naked in the bed room. He chased the boy friend. The victim then dressed up in a t-shirt and a sulu. They then talked for a while. Then both of them left the house. The accused denied that he ever had sexual intercourse with the victim on that night. He stated that the victim and her boy friend want to get rid of him and that was the reason behind this allegation.
7. In view of the evidence given by Sivaniolo, the boy friend of the victim, he did not take any step for what had happened on that night. He straight away went back his house, when the accused entered in to the house with anger and chased him, leaving his girl friend, the victim alone at the house. The victim in her evidence stated that she fallen in



sleep after she was raped by the accused. The accused too had fallen asleep at the same place. They both got up in the morning. The accused then left the house. The boy friend stated in his evidence that the victim then called him and informed about what had happened. She then went to police. The prosecution failed to tender evidence of the medical examination of the victim, though she claimed that she was medically examined by a doctor on the following day. In the meantime, the accused alleges that this is a fabrication of the victim and her boy friend in order to get rid of him.

8. In view of these reasons, it appears there is a reasonable doubt about the probability of the allegation made by the prosecution against the accused person. Hence, I find that the prosecution has failed to prove beyond reasonable doubt that the accused person is guilty for this charge of rape. I accordingly find there is no cogent reasons for me to disagree with the unanimous verdict of not guilty given by the three assessors.
9. In view of the reasons discussed above, I hold that the prosecution has not proven beyond reasonable doubt that the accused person is guilty for this offence of Rape contrary to Section 207(1) and (2) (a) of the Crimes Decree. Hence, I find his not guilty for this offence and acquit him accordingly.
10. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
**R. D. R. Thushara Rajasinghe**  
**Judge**

**At Lautoka**  
**02nd of May 2016**

**Solicitors : Office of the Director of Public Prosecutions**  
**Office of Legal Aid Commission**