

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 148 OF 2013**

**STATE**

**VS**

**PENIASI TABAKANAVANUA**

**Counsels** : **Ms Puamau S.** for the **State**  
**Ms Rigsby T.** for the **Accused**

**Dates of Trial** : **2<sup>nd</sup> May – 4<sup>th</sup> May 2016**

**Summing Up** : **5<sup>th</sup> May 2016**

**Judgment** : **6<sup>th</sup> May 2016**

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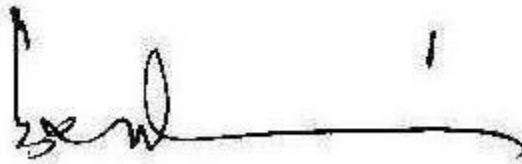
## **JUDGMENT**

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**[1]** The Accused, PENIASI TABAKANAVANUA is charged under Section 207(1),(2)(a) of the Crimes Decree No. 44 of 2009 for Rape of Ruci Likusauafu Cati.

- [2] He pleaded not guilty to the charge and the ensuing trial lasted for 3 days. The complainant, one of her Aunts and a Police witness has given evidence for the prosecution while the accused opted to exercise his right to silence.
- [3] When the matter was adjourned to 4<sup>th</sup> May 2016 for closing submission of the parties, the prosecution and the accused jointly raised concerns on the behaviour of the Assessor No. 3. After hearing the parties and verifying with the Assessor concerned, this Court ruled that he is disqualified to continue and ordered to discharge him under section 224(3)(d) of the Criminal Procedure Decree of 2009. This Court also decided to proceed with the remaining two Assessors under section 225(2).
- [3] At the conclusion of the evidence and after the directions given in the summing up, the two assessors unanimously found the accused not guilty to the count of 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 primarily based only on the evidence of the complainant. According to her on the day of the incident, she and few of her friends have joined the accused and another for a drinking session of some home brew in the late evening. After some time, three of her friends have left them and her cousin was in a heavy intoxicated state. The complainant also dozed off to sleep, but woke up when she felt something on her vagina. She saw the accused performing oral sex on her and she had punched and swore at him.
- [6] The accused too had punched her and had inserted his penis into her vagina overpowering her struggle to avoid the sexual aggression. She called out for help but none arrived. After the act she woke up her cousin who was lying there at arm's length and returned home in the early hours of the following day. Later in the day she noted mucus with blood in her vagina and after two days complained the incident to a Nurse Practitioner, who is also her Aunt. The prosecution called the Nurse Practitioner to support the complainant's claim of injuries and also to express opinion that the two lacerations that were observed on the vagina of the complainant was due to direct application of force.
- [7] The accused, in his cross examination of the prosecution witnesses suggested that the allegation is not true and he has had sexual intercourse with the complainant's consent.
- [8] The assessors have found the evidence of prosecution unacceptable and unreliable, as they unanimously found the accused not guilty to the count of Rape.

- [9] 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.
- [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 prove its case beyond a 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, Peniasi Tabakanavanua from the count of Rape.
- [13] This is the Judgment of the Court.



**Achala Wengappuli**  
**JUDGE**



**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for the Accused** : **Rigsby Law**