

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 304 of 2015**  
**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**JOSEFA BERA**

**MATORINO MADOGO**

**Counsel** : Mr. M. Vosawale with Ms. Kantharia B. for State  
Ms. C. Choy with Ms. A. Singh for 1<sup>st</sup> Accused  
Ms. S. Boseiwaqa for 2<sup>nd</sup> Accused

**Dates of Hearing** : 08<sup>th</sup> - 13<sup>th</sup> March 2017

**Date of Summing up:** 15<sup>th</sup> March 2017


**Date of Judgment** : 16<sup>th</sup> March 2017

**JUDGMENT**

1. The first accused is charged with one count of rape contrary to section 207(1) of the Crimes Act 2009 ("Crimes Act") and the second accused is charged with two counts of rape contrary to section 207(1) of the Crimes Act.
2. The assessors have returned with the unanimous opinion that both accused persons are not guilty of the charges against them.
3. I direct myself in accordance with the summing up delivered to the assessors on 15<sup>th</sup> March 2017 and the evidence adduced during the trial.
4. The complainant and the doctor who medically examined the complainant on 11/09/15 gave evidence on behalf of the prosecution.

5. After the evidence of the witnesses for the prosecution was concluded and having being informed of their rights in terms of section 231(2) of the Criminal Procedure Decree 2009, both accused chose to give evidence.
6. The first accused admitted that he penetrated the complainant's vagina with his penis, but he said that the complainant consented for him to have sexual intercourse with her. The second accused denied the allegation made on the second count. However, in relation to the third count, he also admitted that he penetrated the complainant's vagina with his penis, but said that the complainant consented for him to have sexual intercourse with her.
7. Having considered all the evidence led in this case, the demeanour of the complainant when she gave evidence, the inconsistencies in her evidence and the probability of her version of events, I am not convinced that the evidence given by the complainant was credible and reliable.
8. Therefore, I agree with the unanimous opinion of the assessors.
9. In the circumstances;
  - a) I find the first accused not guilty of the first count and acquit him accordingly; and
  - b) I find the second accused not guilty of the second and third counts and acquit him accordingly.



  
Vinsent S. Perera  
JUDGE

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