

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

**Criminal Case No.: HAC 53 of 2016**

**STATE**

vs.

**UMESH CHAND**

**Counsel** : Ms S. Naibe with Ms R. Uce for the  
State  
Ms S. Dunn [L. A. C] for the Accused

**Date of Summing Up** : 9 February 2017

**Date of Judgment** : 9 February 2017

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**JUDGMENT**

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[1] The accused was tried in this court on the following Count:

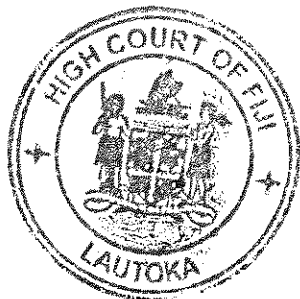
**RAPE:** Contrary to section 207(1) and (2) (a) of the Crimes Decree 2009.

**UMESH CHAND** on the 13<sup>th</sup> day of February 2016 at Lautoka in the Western Division penetrated the vagina of **VANI MARAMA** with his penis without the consent of the said **VANI MARAMA**.

- 2] After hearing my Summing Up on the law and the facts three assessors returned with unanimous findings of not guilty.
- 3] This Court agreed with those opinions and also found the accused not guilty. It was the Judgment of the Court that he be acquitted and discharged.
- 4] The reasons for that judgment are as follows:
  - The prosecution case comprised the evidence of the alleged victim Vani and of a medical officer stationed at Lautoka Hospital.
  - The accused gave evidence.
- 5] Vani told of being with two girlfriends loitering in town in the evening and accepting the offer of the accused to buy them beer. They went with him first to a house where they drank beer and where she said that the accused started making demands that one of the girls provide him with sexual services. They then went with him in a van that he had hired to Lomolomo Beach to drink more beer at about 9pm that evening. It was at the beach that Vani told of being threatened by the accused with a broken beer bottle to have sex with him and that he raped her, not once but twice in the presence of the driver of the van. The Police came to the scene and the accused ran away leaving her semi -dressed to be “rescued” by the Police.
- [6] A medical officer examined Vani the next morning and found evidence of recent sexual activity which the Doctor said was consistent with Vani’s allegation of rape.
- [7] The accused said in his sworn evidence that the when drinking with the girls at the house, they told him that they wanted to go to a night club in Nadi and so he arranged to hire a van to drive them there. On the way to Nadi they wanted to kill time by drinking at the beach. At the beach the

girls demanded money from him to go to the nightclub and they were squabbling with each other. He ran away. He denied having sex with anyone that evening.

- [8] Vani was 17 years old at the time of the alleged rape and 18 when she gave evidence. She gave evidence which was confused, contradictory and inherently implausible.
- [9] Although the accused has nothing to prove, the Court found that his evidence may well have been true.
- [10] With the unsatisfactory evidence of the complainant and the possibility that the accused may have been telling the truth, sufficient doubt was created in the prosecution case.
- [11] The Court could not be sure beyond reasonable doubt that the accused had raped Vani that evening and for that reason the Court accepted the opinions of the assessors and found the accused not guilty.



P. Madigan  
JUDGE

At Lautoka  
9<sup>th</sup> February 2017