

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 026 OF 2017LAB

STATE

VS

SAKEO MATAI

Counsels : Ms. A. Vavadakua for State
Ms. R. Boseiwaqa for Accused

Hearings : 27 and 28 November, 2018

Summing Up : 29 November, 2018

Judgment : 29 November, 2018

JUDGMENT

1. On 27 November 2018, the following information was put to the accused, in the presence of his Counsel:

FIRST COUNT
(REPRESENTATIVE COUNT)

Statement of Offence

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

Particulars of Offence

SAKEO MATAI, between the 20th day of April 2017 and the 30th day of April 2017, in Bua, in the Northern Division, had carnal knowledge of **A.B.**, without her consent.

2. He pleaded not guilty to the charge. The case then proceeded to trial for 3 days before myself and three assessors. I delivered my summing up to the assessors this morning. They returned with a unanimous not guilty opinion for the accused.
3. I had reviewed the evidence called in the trial, and I had directed myself in accordance with the summing up I gave the assessors this morning. In my view, the assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
4. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. The assessors' opinions are not binding on the trial judge, but he must consider them when making his decision.
5. In this case, the only credible evidence against the accused was the complainant's verbal evidence given in court. In fact, the State's case against the accused stands or falls on whether or not the complainant's evidence was credible.
6. The complainant, in her evidence at first said, that the accused, at the material time, inserted his penis into her vagina, without her consent, and he well knew she was not consenting to the same, at the time. When it came to identifying him in accordance with the direction given in paragraph 27 of my summing up, commonly known as the **R v Turnbull** test, the complainant said she could not see the face of the alleged rapist, on the night in question. As a result, she said, she didn't know the identity of the person that raped her, at the material time. The only way, she said, she identified the accused person, was through his "sweating smell", at the time.
7. In my view, the complainant's evidence, as to the identity of the alleged rapist, was inconsistent with each other. At first, she said, it was the accused. Later, she said, as there was no light in the house and it was dark at the time, she did not see the face of the alleged rapist, and thus could not say with any certainty, who raped her. The above inconsistent evidence makes her story not credible. In my view, her evidence was not credible.

8. As a result of the above, I find the prosecution had not proven the case beyond a reasonable doubt. I agree with the three assessors' unanimous not guilty opinion. I find the accused not guilty as charged, and I acquit him accordingly.
9. Accused, you are free to go home.




Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Labasa
Solicitor for Accused : Office of Legal Aid Commission, Labasa