

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 033 OF 2016LAB

STATE

V

ATISH CHAND MAHARAJ

Counselors : Ms. A. Vavadakua for State
Mr. A. Sen for Accused

Hearings : 26 and 27 March, 2018

Summing Up : 28 March, 2018

Judgment : 28 March, 2018

JUDGMENT

1. The three assessors have returned with a mixed opinion. Assessor Nos. 1 and 2 had found the accused Not Guilty as charged, while Assessor No. 3 had found the accused Guilty as charged.
2. The majority of the assessors had rejected the prosecution's version of events, while the minority had accepted the prosecution's version.

3. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors today.
4. The majority and minority view of the assessors were not perverse. It was open to them to reach such a conclusion on the evidence.
5. The majority view appear to hold that the prosecution had not proven its case beyond a reasonable doubt, while the minority view held otherwise.
6. In this case, the prosecution's case depended ultimately on whether or not the complainant's evidence was credible. I have listened to her evidence carefully and closely watched her demeanour. At the beginning, she was determined not to co-operate with the court, by refusing to give evidence. She went to the extent that she said that nothing happened in the bedroom, at her parent's house on 7 April 2013. The law required that once witnesses are summon to the courtroom, they are obliged to assist the court determine the case, by giving evidence; unless they can claim a privilege.
7. In this case, the court had to warn the complainant to do the above, otherwise, she may be liable for prosecution for possibly giving false information to the police. It was then that she gave evidence as summarized in my summing up.
8. The effect of such a behavior by the complainant left her credibility very much in doubt. It had the effect of two assessors (i.e. Assessors Nos. 1 and 2) being thrown into doubt on the prosecution's case.
9. I have noted the assessors' divergent opinions. I must say that after considering the complainant's total behavior during the trial, I am persuaded, to accept Assessor Nos. 1 and 2's position. I am left with a reasonable doubt as to the prosecution's case. It was not safe, from my point of view, to accept PW1's evidence willy-nilly, given her performance during the trial. I cannot say that the prosecution had proven its case beyond a reasonable doubt on the accused's guilt, given the complainant's inconsistent stand as to what happened in the bedroom. On the one hand, she said

nothing happened in the bedroom. On the other hand, she said she was raped in the bedroom. This inconsistent stand on count no. 2, made her not a credible witness.

10. Furthermore, I have heard the accused's evidence. I accept his denial. In my view, he was credible.
11. Given the above, I accept the majority assessors' opinion (i.e. Assessor Nos. 1 and 2) and reject the minority opinion (Assessors no. 3).
12. I find the accused Not Guilty as charged on both counts and acquit him accordingly on both counts.
13. Accused, you may go home.
14. Assessors thanked and released.


Salesi Temo
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Office of Maqbool & Company, Barristers & Solicitors, Labasa**