

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 38 of 2017

STATE

V

1. EPARAMA WARUA
2. STAN DAVIDSON RAMERE

Counsel : Ms. D. Kumar for the State  
Ms. K. Boseiwaqa for the 1<sup>st</sup> Accused  
Mr. R. Vananalagi for the 2<sup>nd</sup> Accused

Ruling : 8 October 2018

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "MW"*

### RULING

1. On 24 July 2017, the Resident Magistrate, Magistrate's Court Labasa, transferred this matter to the High Court, in accordance with Section 194(c) of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act).
2. The matter was first called before the High Court on 20 September 2017. The Disclosures relevant to the case were filed on 18 October 2017, while the Information was filed on 15 January 2018.

3. The two Accused were charged with the following Information:

***Statement of Offence***

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

***Particulars of Offence***

**EPARAMA WARUA and STAN DAVIDSON,** on the 4<sup>th</sup> day of June 2011, at Labasa in the Northern Division, penetrated the vagina of **MW,** without her consent.

4. Both accused took their plea on the same day, and pleaded not guilty to the charge.
5. Thereafter, the matter was fixed for trial from 8 October 2018-12 October 2018.
6. When the matter came up for Pre Trial Conference (PTC), on 14 September 2018, 1 October 2018 and 3 October 2018, Court directed the prosecution to reconsider the charge in the Information.
7. The primary reason for this was that the charge was framed on the basis that the offence was committed by joint offenders in prosecution of a common purpose (the principle of joint enterprise). It was the opinion of Court that the principle of joint enterprise is not applicable to instances of penile rape.
8. This morning, the Director of Public Prosecutions (DPP) filed and served Amended Information. As per the Amended Information filed, the two Accused are charged as follows:

***Statement of Offence***

**RAPE:** Contrary to Section 207 (1) and (2) (a) read together with Section 45 of the Crimes Act 2009.

### *Particulars of Offence*

EPARAMA WARUA and STAN DAVIDSON, on the 4<sup>th</sup> day of June 2011, at Labasa in the Northern Division, had unlawful carnal knowledge of MW, without her consent.

9. Section 45 of the Crimes Act No. 44 of 2009 (Crimes Act) reads as follows:

*"45. — (1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.*

*(2) for the person to be guilty —*

*(a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and*

*(b) the offence must have been committed by the other person.*

*(3) Subject to sub-section (6), for the person to be guilty, the person must have intended that —*

*(a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or*

*(b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.*

*(4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person —*

*(a) terminated his or her involvement; and*

*(b) took all reasonable steps to prevent the commission of the offence.*

*(5) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.*

*(6) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.*

*(7) If the trier of fact is satisfied beyond reasonable doubt that a person either—*

*(a) is guilty of a particular offence otherwise than because of the operation of sub-section (1); or*

*(b) is guilty of that offence because of the operation of sub-section (1)—*

*But is not able to determine which, the trier of fact may nonetheless find the person guilty of that offence.”*

10. When reference is made to Section 45 of the Crimes Act it means that one person (or one Accused) aids, abets, counsels or procures the commission of an offence by another person (another Accused). In such instances, it is common practice for the charge to specify as to who is the principal offender and as to who aided or abetted the said principal offender.
11. I find that the Amended Information filed by the prosecution does not specify as to who the principal offender is and as to who was instrumental in aiding and abetting the said principal offender.
12. The Learned State Counsel submitted that since full disclosures have been provided to the two Accused persons they are aware as to who the principal offender is and who aided and abetted him. Court cannot agree with this contention.
13. Section 58 of the Criminal Procedure Act provides that:

*“58. Every charge or information shall contain—*

*(a) a statement of the specific offence or offences with which the accused person is charged; and*

*(b) such particulars as are necessary for giving reasonable information as to the nature of the offence charged.”*

14. Furthermore, Section 60 of the Criminal Procedure Act states:

*“60. The following persons may be joined in one charge or information and may be tried together —*

*(a) persons accused of the same offence committed in the course of the same transaction;*

*(b) persons accused of an offence and persons accused of —*

*(i) aiding or abetting the commission of the offence; or*

*(ii) attempting to commit the offence;*

*(c) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character; and*

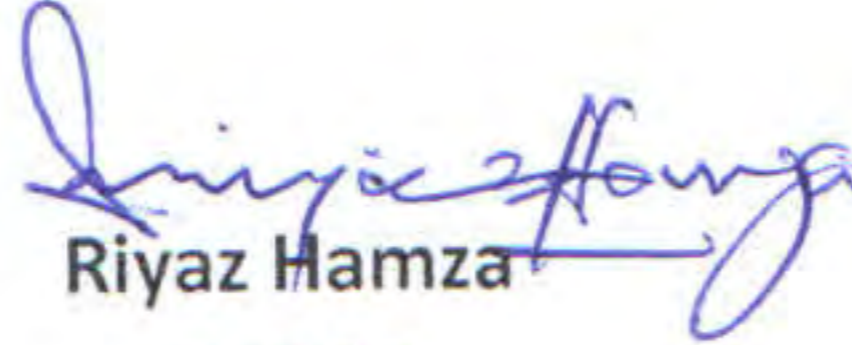
*(d) persons accused of different offences committed in the course of the same transaction.”*

15. This Court is of the opinion that the charge as it is currently framed does not provide such particulars as are necessary for giving reasonable information to the two Accused as to the nature of the offence they are charged. For the said reason I deem the charge to be defective.

16. Section 214(2) of the Criminal Procedure Act states:

*"(2) Where, before a trial upon information (or at any stage of such trial), it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless the required amendments cannot be made without injustice, having regard to the merits of the case."*

17. Accordingly, in terms of the above provisions, I make order that the prosecution amends the Information, specifying as to which of the two Accused is the principal offender and as to who aided and abetted the said principal offender.

  
Riyaz Hamza  
**JUDGE**  
**HIGH COURT OF FIJI**



AT LABASA

Dated this 8<sup>th</sup> Day of October 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.  
Solicitors for the 1<sup>st</sup> Accused : Office of the Legal Aid Commission, Labasa.  
Solicitors for the 2<sup>nd</sup> Accused : Vananalagi & Associates, Suva