

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (a) of the Crimes Act No. 44 of 2009.

Particulars of Offence

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SECOND COUNT

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2. The Prosecution called only the complainant. Having read the record of caution interview and the charge statement of the accused which were tendered by consent, the Prosecution closed its case. At the end of Prosecution's case, the accused was put to his defence. The Defence called the accused and Doctor Orgbit who had examined the complainant after the alleged rape.
3. Having listened to my Summing Up, the assessors unanimously found the accused not guilty of Rape on each count as charged.

4. I review evidence led in trial with my own Summing Up. I give my judgment as follows:
5. The accused Mr. Avinesh Kumar is charged with two representative counts of Rape. To find the accused guilty on the 1st count, the Prosecution must prove beyond reasonable doubt that the accused, on the 12th February, 2016, penetrated complainant's vagina with his penis more than once, without her consent. To find the accused guilty on the 2nd count, the Prosecution must prove beyond reasonable doubt that the accused, on the 13th February, 2016, penetrated complainant's vagina with his penis more than once, without her consent.
6. The accused does not deny that, on the 12th and the 13th of February, 2016, he has had sexual intercourse several times with the complainant. But he denies having done so without complainant's consent. His position is that at all times the complainant was consenting as a willing partner. The only dispute is in relation to the consent. The resolution of the dispute depends on whether the assessors and the court could accept the complainant as a truthful witness. The case turns on one word against the other.
7. Prosecution called the complainant and its case is substantially based on her evidence. To support the version of the complainant, the Prosecution also relies on the caution statement and the charge statement of the accused which were tendered by consent as admitted facts.
8. The complainant does not deny that she was in a romantic relationship with the accused until November, 2015. She also does not deny that she went to a room at Outrigger Hotel on the 12th and the 13th of February with the accused and that she had allowed the accused to have sexual intercourse and to be engaged in sexual activi-

ties which she described in her evidence. The case of the Prosecution is that the so called consent was not freely and voluntarily given.

9. For the accused to be found guilty of rape in this case, it is very important for the assessors and the court to be satisfied that the consent was not freely and voluntarily given by the complainant and that the accused knew or had reason to believe that the complainant was consenting not out of her own freewill but as a result of fear of her nudity being exposed in social media and other tactics allegedly used by the accused.
10. Before coming to the disputed area, it is helpful to have a clear understanding of the nature of rather an unorthodox relationship that had developed between the accused and the complainant at the school. The accused was the agriculture teacher of the complainant at Tabia College, Labasa, for nearly three years since 2013. He was a mature person in his mid-thirties whereas the complainant was a minor of sixteen or seventeen when the love affair started on 15th March 2015. He was married and a father of two children. His wife was also attached to the same staff as he was.
11. In addition to being the agriculture teacher, the accused was the career guide of the complainant who had helped her in filling job applications and *curriculum vite*. There is no doubt that the accused was in a controlling position *vis-a-vis* the complainant.
12. At the beginning, the accused used to send her text messages to the complainant some of which sounded as if they were in a relationship (Hi Baby). The complainant had replied to text messages and having started a love affair on the 15th March 2015 she wrote a love letter which was later exhibited at the trial by the Defence.

13. When the complainant turned 18, the accused wanted to celebrate her birthday in a hotel. On 12th June 2015, which was her birthday, the accused took her to Hotel 88 in Labasa on the pretense that he is going to celebrate her birthday. Instead of celebrating the birthday, they spent time in bed having sex in the hotel room. Over the next few months between June and November 2015, they met each other quite often in the same hotel. He used to come to her place in Labasa to pick her up when her parents were away in Suva. They were spending time in the sexual relationship.

14. The evidence of the complainant as to the intimate relationship that existed between June and November, 2015, was not much disputed by the Defence. According to the complainant, even during this relationship, the accused had shown possessiveness towards the complainant and had placed restrictions in her dealings with other friends in the school. He did not want her to be on the Facebook. He was always monitoring her and trying to control her life, making her life really uncomfortable. He told her not to talk to any other boys in the school and if he did he would punish her.

15. After the exam in November, 2015, the complainant got an offer from the USP to further her tertiary education in Suva. She was planning to move to Suva in December, 2015, and when the accused came to know of her ambition, he became furious and wanted her to pursue nursing studies in Labasa. However, the complainant was determined to move to Suva despite his protest. She informed the accused that she did not want to maintain the relationship with the accused any further. Upon hearing this, the accused got angry and threatened to distribute love letters she had sent to him amongst her neighbours and make the affair public. She felt obliged to go with him day and night to satisfy him. She was frightened because she knew he's a man of deeds and not just words. It is in this context that in November, 2015, the last sexual encounter in Labasa was arranged by the accused at

Hotel 88 in which, according to the complainant's guess, the controversial sex video was made by the accused, without her knowledge.

16. The accused had persuaded the complainant to come to Hotel 88 on the guise that he was expecting to see her for the last time to give her 'something'. She knocked off work in mid-day and went to Hotel 88. The accused was already in the hotel room when she went there. This meeting was different because, on previous meetings, he used to drive her to the hotel. Upon arrival at the hotel, the accused said that he wanted to spend time with her to end the relationship in a 'good way'. He said everything was over. She was happy. She agreed to have sex with the accused during the three hour stay in the hotel. She said that it was the last time she had had sex with the accused in Labasa.

17. During the period between the last meeting at Hotel 88 in November 2015 and her moving to Suva in January 2016, the complainant does not deny that the accused was invited by her parents for a prayer ceremony held at her place just before she moved to Suva and that she was given a letter by the accused to be given to the USP librarian. The accused had even stood guarantor for her to obtain a loan from TE loan scheme. By the conduct of the accused, the complainant thought that he had changed.

18. In January, 2016, the complainant moved to Suva to pursue her higher education at USP. She was staying with her cousin brother at Caubati. The accused continued to send her text messages. The complainant does not deny that, even after moving to Suva, she continued to have contacts with the accused as a friend in a 'professional way'.

19. In the meantime, somewhere in January, 2016, the accused had sent her a message on facebook Messenger saying that it was a gift for her. When she opened the message she saw some screenshots taken from a sex video of them having sex. It came to her mind that this video would have been made by the accused when they were having sex for the last time in Labasa. She was feeling dirty and was really worried. She telephoned the accused to express her anger to him. The accused said “now, will you be able to go away from me?” and he threatened to post the video on social media if she did not agree to be in touch with him. She pleaded “please do not do that”. From the message, it just came to her mind that he had never changed and he was still having that possessiveness in him.

20. During the telephone conversation, the accused agreed to hand over the USB stick that contained the sex video if she agreed to his condition that she does not leave her. She agreed to his condition. Then he said, he will be coming to Suva very soon and he will hand over the sex video to her. The complainant said that she agreed to his request because she wanted some evidence to report the matter to police.

21. On 12th February 2016, the accused contacted the complainant over the phone and informed that he is already on his way to Suva to meet her. She informed him that she is at the Upper Gate of the USP campus. The accused came to the campus in a taxi and asked her to get in the taxi if she needed the USB stick. Instead of giving the USB stick, he took her to Outrigger Hotel in Suva. He gave her the USB stick in the hotel room and said that he made the video just to ensure that she does not go away from him. He further said that it’s just a copy of the video and that he still had copies in his laptop. The complainant was really scared.

22. When the complainant tried to leave the hotel room, he locked the door. She was not ready to have sex with him. Then he said, ‘*you can’t leave the room, we will be spending time together in this room continuously for three days*’. He then took her phone and searched the messages. He found out some messages shared with her friends.

He got angry. He slapped her on her face and punched her on her back. She cried and tendered an apology. But he did not accept her apology. He undressed her and started having sex with her. During the stay in the hotel room, he was having sex with her 4-5 times. After having sex, he took her home in a taxi at around 7.45 pm on the condition that she must come to the hotel next day. He threatened to create a scene at the gate if she did not agree.

23. The complainant said that she was tired and did not watch the sex video that night. She had a wash and went to bed. She did not tell anyone about the incident. She said that, by the time she could tell her sister-in-law of anything on Saturday, the accused had come early in the morning to pick her up.
24. On the following day, that was 13th February, 2016, the accused had come to the gate at around 8 am to pick her up. She did not want to go with him. She informed him that she is really tired. Then he said '*if you don't want me to create a scene at your gate you better come*'. He had no option but to go with him.
25. The accused took her to the same room at Outrigger Hotel and took her to breakfast and then to the room. She told him '*you better don't hit me today. You really make marks on my body and it's really painful*'. She even apologised because he misunderstood her (*facebook*) messages. She was really tired and she said that she cannot be having sex again. She did not agree to have sex with him. He said he was there just for three days and he needed to spend time with her.
26. The complainant was asked to undress herself. Then he had sex with her 2-3 times. It was really rough and hard. He was beating, punching her back and slapping whilst having sex with her. After having sex, he dropped her home at around 6 pm. He wanted her to meet him again on Sunday but she did not agree. On Sunday, he

came to pick her up early in the morning. When he came to pick her up, she said *'today I cannot come, no matter what you'll do, I will not be able to come today'*.

27. The accused had come at the gate. She refused to go with him. He then wanted the laptop and the phone to see the messages on her facebook. He said *'if you can't spend time with me, you'll not be talking to anyone'*. She gave him the laptop, the phone and the flash net at the gate. Before giving the mobile phone, she took one SIM card out and put it in her sister-in-law's phone. She was just waiting for her brother to come so that she could tell him everything and then they could go and report the matter to police.

28. In the meantime she got a call in the morning from the Muslim League asking her to come to arrange for a boarding as part of her scholarship. One person came to pick her up and she had to go with him. By the time she returned home at around 12 noon, the accused had called and the call had been received by her sister-in-law. That was because she had put her SIM card in her sister-in law's phone. The accused had told her sister-in-law about the relationship. When the complainant returned home, her brother was home. He was really angry. She told her brother that she was in a relationship with the accused and that he had a video.

29. The complainant called her mother on the same day and told her everything. Her mother had told her father who was in Lautoka. Her father asked to go with her uncle to lodge a complaint. She went to the Caubati police post on the 14th February 2016 and lodged a report with police on the 15th February, 2016. She gave the USB stick to police officers and watched the sex video at the police station. After watching the video, she realised that the sex video had been shot at the hotel in Labasa.

30. The complainant was medically examined by a doctor on the 15th February, 2016. The complainant said that she did not give consent to have sexual intercourse with the accused on the 12th and 13th of February, 2016.

Analysis

31. The Prosecution submits that complainant's innocent young mind was manipulated and poisoned by the accused in her school days to make her subservient to his lustful demand for sex. The accused in his evidence denies the proposition of the State. Having heard evidence from both sides, I am satisfied that there is acceptable evidence to support the version of the Prosecution. The tender age of the complainant when the accused started the so called love affair (by sending her text messages), the age gap, the teacher-student relationship spanning over 3 years since 2013, the type of assignments he had given to the complainant as a teacher at the classroom, the possessive and controlling attitude he had maintained towards her, the physique of the accused and the way he conducted himself in court amply demonstrate that, in the sexual relationship, the accused was in a controlling and manipulating position *vis- a- vis* the complainant.
32. Prosecution further submits that the accused used various tactics to make the complainant subservient to his demands for sex. The complainant alleges that the accused, without her knowledge, secretly made a sex video of them having sex when they were still in a relationship and that it was being used to blackmail her saying that it will be posted on social media. The complainant also said that the accused was threatening to distribute the love letters she had given to him during the relationship and also to create a scene at her place of residence.

33. The complainant was cross-examined vigorously by the Defence Counsel. She faced most difficult questions and answered all questions in a straightforward manner. She was not evasive. She frankly admitted that she had allowed the accused to engage in all sexual activities she described in her evidence. Her demeanour was completely consistent with her honesty.
34. It was argued on behalf of the accused that the complainant did not complain to anybody at the first available opportunity because the alleged rape had never occurred. The Defence also argues that the eventual complaint to police was not genuine and it was made only to cover up her own wrong doing after the affair was caught or discovered.
35. The complainant had relayed the incident to her mother and went to the Caubati Police Post on the 14th February 2016. She made a complaint to police on the 15th February 2016, a day after the last alleged incident. On the same day, she had relayed the incident to the doctor who medically examined her. There is no considerable delay in her complaint.
36. Even if there had been a delay, it is my considered view that, in the circumstances of this case, there were reasonable explanations for the delay.
37. After the alleged rapes on the 12th February, 2016, the complainant was dropped home at around 8 p.m. She was really tired and she went to bed after having a wash. On the following day, before she could tell her sister-in-law of anything, the accused had come to pick her up early in the morning. The accused had threatened to 'create a scene' at the gate if she did not come. Even though she had managed to get the USB stick by then, she was told that the copies of the sex video was still in

his laptop. The complainant said she was afraid to tell her brother and wanted to tell her mother straightaway. The fear of her nudity being exposed in social media was also still ongoing.

38. On the following day, that was 13th February, 2016, the complainant was dropped home at around 6 pm. with the warning '*if you don't want me to create a scene at your gate you better come*'. With this warning was the fear associated with the sex video.
39. On the 14th February, 2016, the complainant had made a complaint to her brother, sister-in law, and mother and, on the 15th February, 2016, to police. The Defence argues that the complaint was eventually made because she was caught. The complainant denies that she complained because she was caught. She explained her position in her evidence.
40. The complainant said that she was determined to complain to her sister-in-law and brother on Sunday but she had to go with the Muslim League man in the morning to find out a boarding house which was part of her scholarship. Before going out with this man, she knew that the accused wanted her to be in the hotel on Sunday and that he would call on her phone. Nevertheless she put her SIM card in her sister-in-law's phone and went out. The accused had in fact called on her sister-in-law's phone and that is how the whole drama came to light. If the complainant had wanted to keep this affair a secret any longer, she would not have put her SIM card in her sister-law's phone. In these circumstances, the argument that she eventually made a complaint because she was caught cannot be accepted.
41. On the 13th February, 2016, the accused had informed the complainant that he wanted her to be in the hotel on the following day (Sunday), but she did not agree to his demand. She refused to go with the accused and was determined to face any

eventuality. It was the Valentine's Day. According to accused's evidence, one of his main purposes in coming to Suva was to celebrate Valentine's Day with the complainant, on her invitation. Then the question arises as to why she missed this important day and went with the Muslim League man even without informing the accused if she had invited the accused to celebrate the Valentine's Day in Suva. Her conduct is consistent with her version that she was an unwilling partner.

42. Defence says that doctor's observations are not consistent with complainant's evidence and that of a forceful sexual intercourse.
43. The complainant said that she told the doctor that she was slapped and punched. However the doctor has not recorded what the complainant is alleged to have said. This is not an assault case but a rape case. The complainant's omission to mention about slapping and punching is not material because the complainant was not expected to say everything to the doctor that had happened. It is also likely that the doctor must have missed out to record something that was said.
44. The doctor did not observe any external marks or injuries on complainant's body. The hymenal lacerations observed by the doctor at 5 o'clock and 7 o'clock positions are consistent with rough and forceful sex. The complainant did not say that she was injured by the slaps and the punches. Since the doctor had examined the complainant sometimes later, it is possible that the marks would have vanished. The doctor had not seen even the love bites that the accused admitted to having been made. Therefore, doctor's observations are not conclusive evidence as to the marks and to test complainant's credibility.
45. The complainant said on the 13th the accused had rough sex whilst punching and slapping. The Defence Counsel argues that it is not possible to do all these things

simultaneously. In my opinion, it is not impossible for the accused to punch and slap the complainant while having sex at the same time.

46. The complainant admitted that she took different positions, sucked accused's penis went on top of him and allowed him to do whatever he wanted. She said that she had indicated to the accused that she was not ready to have sex with him. She said that she was not enjoying sex with him. She said that she was there for a purpose, that was to obtain the sex video. In the course of the re-examination, the complainant has provided acceptable explanations as to why she conducted herself in the way she did and consented for him to have sexual intercourse with her.
47. On the 12th, in the afternoon sex session, the complainant said that she pretended as if she was having consensual sex and engaged in a friendly talk with the accused because she wanted to go home. The accused had threatened to keep her in the hotel continuously for three days. The complainant said that she had agreed for him to have sex the way he wanted because he promised to drop her home.
48. The Defence Counsel argues that the complainant had an opportunity to scream, telephone the receptionist and run away from the hotel room if she was assaulted and forcefully attacked. The complainant has given acceptable answers. She said she was scared that such reactions would have created a scene at the hotel.
49. The reason for her excitement to see the accused in Suva was satisfactorily explained. The complainant said that she was excited to see the accused in Suva because she knew that the accused was coming with the USB stick. The very first question she had asked from the accused upon his arrival was whether he had brought the video as promised and whether he would give it to her. The complainant was then asked to board the taxi to give the sex video.

50. Exhibits DE1-DE5 were tendered by the Defence. The court allowed them to be tendered through the complainant because she admitted writing or giving those things to the accused. The position of the Defence is that DE 1 (Chinese Fan) was given to the accused on the 12th of February, 2016, as a Valentine's Day gift and the other documents, except DE 3, were given to him at the Outrigger Hotel on the 12th and 13th February, 2016, soon after the sexual encounters. Purpose of tendering those exhibits (except DE 3) was to show that the complainant was still in love with the accused and that she had consented to sex out of her own free will.
51. The complainant explained when and under what circumstances those exhibits were given to the accused. She said that DE1 (Chinese Fan) was a gift from her sister and, because her best friend nicknamed "Gang Star Baby" really liked it, she thought of giving it to her best friend. When it was being decorated at the classroom to be given to her best friend, the accused saw it and, when he saw it, he demanded that it be given to him as a gift to signify her true love towards him. Accused's possessiveness towards the complainant justifies such a conduct. Although the accused said that he used to call the complainant 'Gang Star Baby', his version was never put to the complainant when she took stand. I would accept the complainant's version because it was given well before the Valentine's Day and there is no reference to the Valentine's Day in the writings.
52. There is no dispute that DE3 (love letter) was given to the accused at the school when they were still in the relationship. The version of the complainant is that the other documents (DE 2, DE4 and DE 5) were also given at the school, along with DE 3. Describing the circumstances under which those documents were given, the complainant said that she was asked to write ' I love you Avinesh Kumar' 500 times as a punishment for her failure to speak to the accused on the previous night. The line 6 of DE3 supports the evidence of the complainant. It says.. '*Baby last night you were giving me lectures regarding these two assignments*'. She described these two assign-

ments being the letter (DE3), DE4 and DE5. For these reasons, I would accept the complainant's version that exhibits DE1, DE2, DE4 and DE5 were given to the accused at the school when she was still in the relationship with accused.

53. The complainant satisfactorily explained what she meant when she said that the accused treated her like a wife. She also explained why in the letter DE3 she was being referred to as Mrs. Nafeeza Kumar that she wrote when the relationship was still pending.

54. The Defence Counsel challenged the credibility of complainant's evidence about her sending screen shots via Facebook Messenger to the accused because she failed to show the screen shots either to police or court. The complainant's explanation was that the Facebook account on which screen shots were posted was opened by the accused and accused himself had closed it. The complainant said that she was trying to log on to her Facebook account at the police station but she failed. The accused had collected the laptop, phone and the flash net from the complainant on 14th February, 2016, when she refused to go with him. Those gadgets were in accused's possession until they were handed back to the police. The reason given by the accused for collecting those gadgets from the complainant is not plausible because the complainant's conduct on that day is not consistent with the strategy allegedly used by her to come out of the house. I am inclined to believe that the accused had taken possession of those gadgets to erase the evidence against him.

55. The accused proved himself to be an untrustworthy witness. I observed his demeanour very attentively and carefully. He started off his evidence, touching the wholly book on his forehead portraying a picture to the assessors that he is a pious man who would never tell a lie on oath. He said that his gesture was to signify that he would be guided to tell the truth. However he admitted that having an extra marital affair with a woman is against his religious teachings. He admitted that

having sex with a student is against teachers' professional code of conduct. He admitted that he maintained this unorthodox relationship in secrecy and did not reveal it to his wife and rest of the world although his intention was to make the complainant his lifetime partner. He failed to reveal the so called problems he was having with his wife. Knowing very well that he was at breach of his professional code of conduct as a teacher, he did not resign his teaching job until the matter was reported to police, He was evasive and he pretended not to hear some difficult questions to buy time to answer. His conduct in court is consistent with that of an dishonest witness.

56. The accused advanced a 'blackmail theory' to counter the blackmail allegation of the complainant. According to his evidence, he was twice blackmailed by the complainant, firstly, at the school on the pretense that she had evidence against him. However, this blackmail incident was never put to the complainant when she took stand. Quite surprisingly, he, as a teacher, had never taken any action against the complainant for blackmailing him. The explanation that she had threatened to commit suicide is unacceptable because it was never put to the complainant when she took stand. It appears that the accused had generated a new story to meet the credibility challenge.
57. The accused was blackmailed by the complainant for the second time on the sex video. His evidence is that the sex video was a production of the complainant to blackmail him so that she could ensure that the partnership between them was not torn apart.
58. There is no dispute that a sex movie is in existence and the 'stars' featuring in the movie are the complainant and the accused. The question on who made the sex video is hotly contested. The outcome of this trial to a greater extent, if not wholly, will depend on the answer to this question because the theory advanced by the

Prosecution is that the complainant gave consent for sexual intercourse due to fear of this sex movie being exposed in social media.

59. The accused denies having made such a sex video. He denies ever having had such a video in his possession and having used such a video to blackmail the complainant to get her consent for sex. The evidence of the accused on this issue is terribly inconsistent and unbelievable. According to the accused, he had never seen such a sex video until it was shown to him by his counsel in the run-up to the trial. The accused said that he was told about this video in January 2016. However he had not taken any action against the complainant for blackmailing him on this video. He had waited until 12th February 2016 to grab the opportunity to obtain the evidence of sex video from the complainant despite the blackmail threat had been hanging over his head for over a month. Although he had gone to police to lodge a report against the complainant for allegedly violating the DVRO, he has not reported the blackmail threat to police. His explanation is that he was not sure if such a video had really existed. However he had told the complainant's sister-in-law about the sex video even before its real existence was notified by the police.
60. Furthermore, his main purpose in coming to Suva, even sacrificing the cake with his family on the Valentine's Day, was to obtain the sex video from the complainant. He had spent a colossal amount of money on the flight and the hotel booking in this regard. He however admitted that he went home empty handed being unable to obtain the sex video. It is highly unbelievable that the accused had kept on extending his stay in Outrigger Hotel for three days to obtain a sex video whose existence he himself doubted.
61. While giving evidence, the accused seemed to have forgotten the very purpose why he came to Suva until he was questioned by court if he managed to obtain the sex video from the complainant. He then added the second reason for coming to Suva.

That is to enjoy the sex with the complainant on the Valentine's Day, on her request.

62. The accused contradicted himself on the purpose for which the sex video was allegedly made by the complainant. His evidence under oath is that the complainant made the sex video because she wanted to ensure that their relationship is intact forever. In contrast, the accused in his charge statement had told the police that he was being blackmailed by the complainant to obtain money.
63. The accused, under cross-examination, said that he was not sure where the sex movie could have been shot. However he admitted that the only place where he has had sexual intercourse with the complainant in Labasa was Hotel 88. Therefore he could not have any doubt as to the place where the movie was shot. The accused is evasive and not frank in his answers. Although his counsel suggested to the complainant that the sex video could have been made at the Outrigger Hotel itself, the accused himself admitted that he came to Suva and booked the Outrigger Hotel for the purpose of obtaining the sex video that was already in existence.
64. The accused admitted that he is the one who had always booked Hotel 88. He had accompanied the complainant to the hotel whenever they went there. However on the last occasion when they had sexual intercourse in November, 2015, the accused had gone alone to the hotel room first and asked the complainant to come later. The complainant believes that it was on that day the sex movie was shot.
65. In the absence of the assessors, the Defence Counsel on the instruction of the accused objected to State Counsel's application for the screening of the sex movie in court disputing the fact that the man in the movie is not the accused. However at the trial stage, the accused admitted that it was him. When the accused was asked if

he had given such an instruction to his counsel, the accused refrained from giving a clear answer. In the video, only the complainant's face is clear. Nobody would recognise the face of the accused by watching this video and therefore, any attempt to use this video to tarnish the image of the accused would not be successful. It is therefore clear that the video has been a production of the accused.

66. Based on the inferences that could reasonably be drawn from the facts proved, I come to the conclusion that the sex video is a production of the accused.

67. The accused said that he continuously maintained his sexual relationship with the accused until the report against him was lodged with police on 15th February, 2016. However he admits that he refrained from having sex with the complainant from November 2015 till 12th February, 2016. The accused could not satisfactorily explain why he refrained from having sex with the complainant during that period if he was still in the relationship. His explanation that, during the school vacation, his children were home and he had to spend time with them cannot be accepted because the accused admitted that he was free to go out leaving his family home, giving various reasons. In light of this admission of the accused, I am inclined to believe the evidence of the complainant that her relationship with the accused had come to an end in November, 2015.

68. The accused said that he was invited by the complainant to the prayer ceremony held at her place just before she left for Suva. The accused took an effort to show that he was still in the relationship with the complainant during this period. The complainant's version is that it was her parents that had invited the accused, not her. However, the accused said that he did not attend this ceremony despite repeated requests from the complainant. He did not explain satisfactorily why he did not attend this important event if the complainant was eagerly awaiting his attendance. According to his evidence he had gone to complainant's place on the following day

with a friend because he expected some problems. It is clear that the accused has had some doubts about the invitation

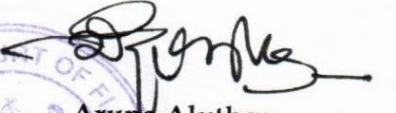
69. The Defence Counsel was attacking the credibility of Prosecution's version based on DPP's withdrawal of the case filed in Labasa Court and the amended information filed in this court at the end of the Prosecution's case.

70. The complainant admitted that the accused was charged with rape in Labasa courts based on her statement dated 15th February 2016. She admitted giving two statements to police thereafter, one on 20.02.2017 and the other on 31.03. 2019. The subsequent statements that were given to police to clarify her position in my opinion have not damaged the consistency of the version of the Prosecution. The DPP in his wisdom has withdrawn the charge filed in Labasa and filed a fresh information based on complainant's subsequent clarifications. The amended information filed in this court reducing the number of counts to two also did not in any way damage the Prosecution's version and its consistency.


71. The Defence tendered a letter issued by police under the heading 'To Whom it May Concern' to show that the complainant was contacting him even after this rape allegation was made. It appears that this letter has been issued on a request by the accused. Defence did not call the police officer to satisfy this court that this letter was issued after a proper investigation. The accused did not produce any text message to prove that the complainant was contacting him when the DVRO was pending against him. The accused is a man who has even retained a love letter given to him by the complainant way back in school days to support his defence. In view of the serious allegations pending against the accused in court, the common sense demands for him to retrieve and retain the text messages allegedly sent to him by the complainant as best evidence. I am not convinced that the complainant was contacting the accused after this allegation was lodged. In view of the above I take the

view that it is possible for the accused to lodge a false report against the complainant to generate evidence to bolster his defence.

72. I am satisfied that the version of Prosecution is credible and believable. The evidence of the accused did not shake the credibility of the version of events of the Prosecution's case. There can be many reasons for an accused person to lie under oath in his defence. However, I am satisfied that the accused in this case deliberately lied under oath because he is guilty. There is no reason for the assessors to reject the version of the Prosecution.
73. I accept the version of the Prosecution and reject that of the Defence. Prosecution proved that the complainant consented to the alleged sexual intercourse both on 12th and 13th of February, 2016 out of fear that her nudity will be exposed by the accused on social media and also because of other tactics used by the accused to intimidate the complainant. Prosecution also proved that the accused knew that the complainant was consenting to the alleged sexual intercourse because of his blackmail threat.
74. I find the accused guilty on both counts. The accused is convicted accordingly.
75. That is the judgment of this court.



Aruna Aluthge
Judge



HIGH COURT OF FIJI
SUVA

AT SUVA

15 May 2019

**Solicitors: Office of the Director of Public Prosecution for State
Jiten Reddy Lawyers for Defence**