

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

**CRIMINAL CASE: HAC 162 OF 2016**

**BETWEEN** : STATE

**AND** : APISALOME NAWA

**Counsel** : Ms. R. Uce for State  
Ms. Bilivalu with Ms. Reddy for the Accused

**Date of Hearing** : 29<sup>th</sup> and 30<sup>th</sup> of May, 2019

**Date of Closing Submissions** : 30<sup>th</sup> of May, 2019

**Date of Summing Up** : 31<sup>st</sup> of May, 2019

**J U D G M E N T**

1. The accused is being charged with one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. The particulars of the offences are that;
2. The trial commenced on the 29th of May 2019 and concluded on the 30th of May 2019. The prosecution presented the evidence of two witnesses, including the complainant. The accused exercised his right to remain silent, hence did not adduced any evidence for the defence. Subsequently, the learned counsel for the prosecution and the defence made their respective closing addresses. I then delivered my summing up.

3. The three assessors, in their opinion unanimously found the accused not guilty to this offence as charged.
4. Having carefully taken into consideration the evidence presented during the course of the hearing, the respective closing addresses of the counsel for the prosecution and the defence, the summing up and the opinion of the assessors, I now proceed to pronounce my judgment as follows.
5. According to the evidence adduced during the course of the hearing, the prosecution alleged that the accused had inserted his fingers into the vagina of the complainant without her consent while she was sleeping in the room of her children at her house. The accused has admitted that he inserted his fingers into the vagina of the complainant, but he claims that it was done with her consent. Accordingly the main dispute that the court has to determine is whether the complainant gave her consent to the accused to insert his fingers into her vagina and also whether the accused knew or believed or reckless that the complainant was not consenting for him to insert his fingers in that manner.
6. Even though the accused admitted that he had inserted his fingers into the vagina of the complainant, the learned counsel for the defence extensively cross examined the complainant regarding the manner and the position that the accused inserted his fingers into her vagina. Accordingly, it is clear that the accused has only admitted that he inserted his fingers into her vagina, but not to the manner in which he inserted his fingers into the vagina of the complainant as claimed by the prosecution. Therefore, it is the duty of the court to determine whether the accused inserted his fingers into the vagina of the complainant in the manner that the complainant claims.
7. The evidence of the complainant is heavily infested with inconsistencies and contra-


diction with her own evidence and also with the evidence given by Vatemu.

8. The complainant said during the evidence in chief that the accused put his hands through the bottom of the mini short that she was wearing on that morning. She then said the accused tried to pull it down halfway and put his hand through the bottom of the mini short. Moreover, you may recall that the complainant said during the cross examination that she knew that it was not her husband when she was being touched. During the re-examination the complainant said that she initially thought it was her husband but then she felt the pain and thought it cannot be her husband.
9. According to the evidence of Vatemu, the complainant and the accused had been talking, laughing, joking, touching and hugging each other during the drinking session. The complainant in her evidence said that she did not do such acts with the accused during the drinking session. Moreover, the complainant said that she went into the room where her husband was sleeping to sleep. According to the evidence of Vatemu, the complainant never went into the room of her husband, but went into the room where her children were sleeping when she went to sleep. According to the evidence of the complainant she was wearing a mini short on that day. However, Vatemu said in his evidence that she was wearing a long pants which goes up to the bottom of her legs.
10. Moreover, the complainant admitted in her evidence that the evidence she gave in court in respect of the time that she went to sleep and the manner the accused insert his fingers into her vagina is not inconsistent with the statement that she previously made to the police regarding this incident.
11. Having taken into consideration these inconsistencies and contradictions, I find such inconsistencies and contradiction are directly linked to the main issues of this matter,

creating a reasonable doubt about the reliability, credibility and truthfulness of the evidence given by the complainant.

12. Accordingly, I find the prosecution has failed to prove beyond reasonable doubt that the accused has inserted his fingers into the vagina of the complainant without her consent. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of not guilty given by the assessors.
13. In conclusion, I hold that the accused not guilty to the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and acquit from the same accordingly.



  
R. D. R. Thushara Rajasinghe  
Judge

At Lautoka  
31<sup>st</sup> May, 2019

Solicitors : Office of Director of Public Prosecution  
Office of the Legal Aid Commission