

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

**CRIMINAL CASE NO: HAC 19 of 2017**

**BETWEEN:**

**STATE**

**PROSECUTION**

**AND:**

**ERONI RATUDOI**

**ACCUSED PERSON**

**Counsel:**

Ms. A. Vavadakua for State

Ms. S. Devi with Co- Counsel Ms. K. Marama for Accused

**DATE OF HEARING:**

11<sup>th</sup> February 2019

**DATE OF CLOSING SUBMISSION:**

12<sup>th</sup> February 2019

**SUMMING UP:**

12<sup>th</sup> February 2019

**JUDGMENT:**

12<sup>th</sup> February 2019

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**JUDGMENT**

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1. The name of the complainant is suppressed.
2. The accused is being charged with one count of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act and four counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crime Act. The particulars of the offences are that;

***FIRST COUNT***

***Representative Count***

***Statement of Offence***

**RAPE: *Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.***

*Particulars of Offence*

**ERONI RATUDOI**, between 01 January 2012 to 31 December 2012, at Savusavu in the Northern Division, with his penis, penetrated the vagina of **A.B.**, a child under the age of 13 years.

**SECOND COUNT**

*Representative Count*

*Statement of Offence*

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

*Particulars of Offence*

**ERONI RATUDOI**, between 01 January 2014 to 31 December 2014, at Savusavu in the Northern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

**THIRD COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**ERONI RATUDOI**, between 01 November 2015 to 30 November 2015, at Levuka in the Eastern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

**FOURTH COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**ERONI RATUDOI**, between 01 December 2015 to 24 December 2015, at Savusavu in the Northern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

**FIFTH COUNT**

*Representative Count*

*Statement of Offence*

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

*Particulars of Offence*

**ERONI RATUDOI**, between 23 April 2016 to 28 August 2016, at Savusavu in the Northern Division, penetrated the vagina of **A.B.**, with his penis, without her consent.

3. The hearing commenced on the 11th of February 2019 and concluded on the same day. The prosecution adduced the evidence of the complainant. At the conclusion of the prosecution case, the learned counsel for the defence made a submissions pursuant to Section 231 (1) of the Criminal Procedure Act, stating there are no evidence to establish that the accused has committed the first, second, fourth and fifth counts as charged. The learned counsel for the prosecution also conceded to this submission. Accordingly, I found the accused not guilty to the first, second, fourth and fifth counts as charged in the information and acquitted him from the same.
4. The accused then gave evidence for the defence. The medical examination report of the complainant, which was made on the 17th of March 2017, was tendered as prosecution exhibit one with the consent of the defence. The learned counsel for the prosecution and the defence then made their respective closing addresses. Subsequently, I made my summing up.

5. The three assessors in their unanimous opinions found the accused guilty to the offence.
6. Having carefully taken into consideration the evidence adduced during the hearing, the respective closing addresses of the counsel, the summing up and the opinions of the assessors, I now proceed to pronounce my judgment as follows.
7. The prosecution alleges that the accused penetrated the vagina of the complainant without her consent while they were staying at the Royal Park Hotel in Levuka. The accused denies the allegation, claiming that he has been suffering from erectile dysfunction therefore, he was not able to penetrate into the vagina of the complainant.
8. In view of the evidence presented by the prosecution and the defence, the main dispute is whether the accused actually penetrated into the vagina of the complainant.
9. The accused in his evidence said that he has been suffering from this erectile dysfunction since 2012. However, there is no medical report to confirm about this physical condition of the accused. The accused said that he visited the Savusavu Hospital, but they do not have specialist doctor who could properly treat this erectile dysfunction. The accused had referred to the Labasa Hospital after he was charged for this offence, in order to check this physical condition. The accused said the special doctor who could treat this condition was not at the hospital and a normal doctor attended to him. The said doctor has told him that he may be suffering from erectile dysfunction. If the doctor found that the condition of the accused demands the attention of a special doctor, he would have definitely referred the accused to such a specialist doctor.
10. The accused claims about a medical condition which has prevented him engaging in sexual intercourse. Such a medical condition can only be confirmed by a doctor of medicine. The evidential burden of the accused to establish his defence, requires the accused to present or point some evidence that could suggest a reasonable possibility that he has been suffering from erectile dysfunction during the month of November 2015. In view of these reasons, I do not find the evidence of the accused has suggested that there

was a possibility that the accused has been suffering from erectile dysfunction during the month of November 2015. Hence, I refuse to accept the evidence of the defence.

11. The complainant in her evidence explained the dominated nature of the accused over her and her family. At one occasion, he has chased the family, including the complainant, out of the house on the ground that a mobile phone went missing. The complainant said that she did not like what he did and told him about it. I notice the demeanour of the complainant when she gave evidence. It was really difficult for her to recall those events where her own father had allegedly raped her. She broke down many times while giving evidence. Considering these reasons, I accept the evidence of the complainant as reliable, credible and truthful evidence.
12. Accordingly, I find that the prosecution has successfully proven beyond reasonable doubt that the accused has inserted his penis into the vagina of the complainant without her consent as charged under the count three. Therefore, I do not find any cogent reasons to disagree with the unanimous opinion of the assessors.
13. In conclusion, I find the accused guilty for the count of rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, as charged under count three and convict for the same accordingly.



  
R.D.R.T. Rajasinghe  
Judge

At Labasa  
12<sup>th</sup> February 2019

Solicitors  
Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused