

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 53 of 2018

[CRIMINAL JURISDICTION]

STATE

V

PAULA TAMANISAUTU

Counsel : Ms. S. Swastika for the State  
Ms. L. Ratidara with Ms. O. Grace for the Accused

Hearing on : 29 - 31 July 2019

Summing up on : 01 August 2019

Judgment on : 01 August 2019

JUDGMENT

1. The accused is charged with the following offences;

**COUNT ONE**

*(Representative Count)*

*Statement of Offence*

**Rape:** contrary to section 207 (1) and (2)(a) of the Crimes Act, 2009.

*Particulars of Offence*

PAULA TAMANISAUTU between the 1<sup>st</sup> day of January 2016 and the 31<sup>st</sup> day of December 2016 at Waimalua Settlement, Tailevu in the Eastern Division, had carnal knowledge of MAKELESI ROKOSORO, without her consent.

**COUNT TWO**

*(Representative Count)*

*Statement of Offence*

**Rape:** contrary to section 207 (1) and (2) (a) of the Crimes Act, 2009.

*Particulars of Offence*

**PAULA TAMANISAUTU** between the 1<sup>st</sup> day of January 2016 and the 31<sup>st</sup> day of December 2016 at Waimalua Settlement, Tailevu in the Eastern Division, on an occasion different from Count 1, had carnal knowledge of **MAKELESI ROKOSORO**, without her consent.

**COUNT THREE**

*Statement of Offence*

**Rape:** contrary to section 207 (1) and (2)(a) of the Crimes Act, 2009.

*Particulars of Offence*

**PAULA TAMANISAUTU** on the 19<sup>th</sup> day of January 2018 at Waimalua Settlement, Tailevu in the Eastern Division, had carnal knowledge of **MAKELESI ROKOSORO**, without her consent.

2. The assessors have returned with the unanimous opinion that the accused is not guilty of all the three charges above.
3. I direct myself in accordance with the summing up delivered to the assessors this morning and the evidence adduced during the trial.
4. The prosecution called three witnesses including the complainant. The accused gave evidence in his defence. The accused did not dispute that he penetrated the complainant's vagina in relation to all three counts. The two elements involving consent were in dispute.
5. The complainant was 18 years old when the first incident which is relevant to the first count had taken place. In my judgment, given the manner the complainant answered certain vital questions, it was clear that she was not telling the truth. Her evidence that she did not consent to have sexual intercourse with the accused in relation to the three charges was not convincing.
6. PW2, the mother of the complainant was the person who received the first complaint in relation to this case. However, the complainant had not informed PW2 that the accused raped her. PW2 was only told that the accused was touching her and that the accused had tried to do something to her. Therefore, what the complainant told PW2 on 21/01/18 does not disclose the offence the

accused is charged with. On the other hand, the complainant's evidence is not consistent with what the complainant had told PW2. It is pertinent to note that the complainant had told PW2 that if PW2 goes to Taveuni, the accused will marry her.

7. PW2 admitted that she had suspicions of the accused and the complainant having an affair and according to the evidence, PW2 had questioned the accused and the complainant prior to 21/01/18. PW2 did not disclose what exactly she was told by the complainant. It was clear that the complainant and PW2 did not reveal what actually took place in the house they lived in from 2016 to 2018 in relation to the allegations against the accused.
8. Considering all the evidence including the evidence given by the accused, I find the complainant's evidence regarding the manner the accused and her had sexual intercourse in relation to the three charges to be unreliable.
9. The evidence in this case does not establish the three charges against the accused beyond reasonable doubt even though the conduct of the accused as revealed in the evidence is deplorable according to moral standards.
10. I agree with the unanimous opinion of the assessors. I find the accused not guilty of each count and hereby acquit him accordingly.



A handwritten signature in blue ink, appearing to read "Vincent S. Perera".

Vincent S. Perera  
JUDGE

**Solicitors:**

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