

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

**Criminal Case No.: HAC 200 of 2016**

**STATE**

**V**

**EPI KORAINAMOCE TUITECI**

**Counsel** : Mr. J. Niudamu for the State.  
: Ms. K. Vulimainadave for the Accused.

**Dates of Hearing** : 12, 13 August, 2019  
**Closing Speeches** : 14 August, 2019  
**Date of Summing Up** : 14 August, 2019  
**Date of Judgment** : 15 August, 2019

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**JUDGMENT**

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*(The name of the complainant is suppressed she will be referred to as "EL").*

1. The Director of Public Prosecutions charged the accused by filing the following information:

**COUNT ONE**  
**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*

**EPI KORONAMOCE TUITECI**, between the 1<sup>st</sup> day of August, 2016 to the 31<sup>st</sup> day of August, 2016 at Sigatoka in the Western Division, inserted his penis into the vagina of “EL” without her consent.

2. The three assessors had returned with a unanimous opinion that the accused was not guilty of one representative count of rape as charged.
3. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up, redirection and the evidence adduced at trial.
4. The prosecution called one (1) witness and the accused exercised his right to remain silent and did not call any witness.
5. The complainant, who was 16 years of age and a primary school student in 2016 informed the court that on one afternoon in August, 2016 she was doing some cleaning at home when the accused who was her neighbour came and asked her about the whereabouts of her brother and her parents.
6. When the complainant told the accused that they were not at home the accused walked into her house and asked her if she had a boyfriend the complainant did not reply. At this time the accused came close to her and told her to remove her clothes she refused and told the accused that she will tell her father.
7. The accused told her not to be scared and then he forcefully removed the complainant's clothes and pushed her on the floor, he made her lie down and told her not to be afraid. The complainant did not like what the accused was doing to her, at this time the accused forced the complainant to remove her shorts and panty.

8. The accused also had his pants down, he put on a condom then went on top of the complainant and inserted his penis into her vagina, she told the accused that it was painful but the accused said keep still and he will do it slowly.
9. The complainant did not like what the accused was doing to her, she wanted to cry for help, but since her house was far from the village she did not shout for help. The complainant further stated the accused had sexual intercourse with her for about 5 minutes during this time she felt pain, was feeling weak and had a headache.
10. After having sex with the complainant the accused stood up, took his clothes and left. The complainant felt so weak that she could not stand up, she did not tell anyone because she was afraid if her father came to know about what the accused had done to her he would harm the accused.
11. Also, on another afternoon in the same month the complainant was sleeping with her brother Avete when the accused came into her house and asked for some tobacco. After the complainant found some she gave it to the accused. The accused smoked the tobacco in the verandah of her house after a while he came inside the house and asked the complainant *"can we do something bad or no"* the complainant replied *"if my father finds out we will both be in trouble"*. The accused did not care about what she had said, he moved close to her pushed her on the floor and then forced her to remove her shorts and panty.
12. As the complainant was about to scream the accused threatened her that if she screams he will do something to her, this made the complainant scared and embarrassed the accused forcefully inserted his penis into her vagina and had sexual intercourse with her for about 5 minutes. On this occasion the accused did not wear a condom after the accused had finished, he took his clothes and left. She did not tell anyone since she was afraid her father

would harm the accused if he came to know about what the accused had done to her.

13. Thereafter, in late August the complainant did not have her menses she felt she was pregnant so she told her aunt about her problems who then informed her mother. When her father came to know about her pregnancy he was furious he went looking for the accused but could not locate him.
14. On the other hand the accused denies committing the offence as alleged. The defence took the position that the accused had sexual intercourse with the complainant once only with her consent at the palm trees near the piggery in September, 2016 and not in August, 2016 as alleged. The defence further says the complainant did not complain or tell anyone about what the accused had done to her since she had consented, and she made a false complaint against the accused after she got pregnant.
15. I accept the evidence of the complainant as truthful and reliable. She gave a coherent account of what the accused had done to her in August, 2016. I also accept that the complainant was afraid of her father, hence she did not inform anyone about what the accused had done to her since the complainant did not want her father to harm the accused. This stance of the complainant suggests that she did not want her father to be in conflict with the law by doing something to the accused.
16. Moreover, the fact that the complainant did not scratch or kick or shout or yell does not, in my judgment affect the reliability of the complainant's evidence. The complainant was alone and her house was away from the village and the lack of physical resistance by the complainant in the circumstances of this case does not mean that she was consenting to what the accused was doing to her.
17. I also do not accept that the complainant was motivated by her pregnancy to cry rape it is only natural that a child of 16 years will be compelled to inform someone when faced with such a situation. The complaint by the complainant after about two months of the alleged

incident in October, 2016 does not also affect the reliability of the complainant's evidence.

18. I have no doubt in my mind that the complainant told the truth in court her demeanour was consistent with her honesty. She was able to withstand cross examination and was not discredited the complainant was also not evasive in her answers. The proposition put forward by the defence is not plausible.
19. The defence has not been able to create a reasonable doubt in the prosecution case.
20. I am satisfied beyond reasonable doubt that the accused between the 1<sup>st</sup> day of August 2016 and 31<sup>st</sup> August, 2016 inserted his penis into the vagina of the complainant without her consent.
21. I also accept that the accused knew or believed that the complainant was not consenting or didn't care if she was not consenting at the time.
22. For the above reasons, I overrule the unanimous opinion of the assessors that the accused is not guilty of one representative count of rape as charged.
23. In view of the above, I find the accused guilty as charged and I convict him accordingly.
24. This is the judgment of the court.



*Sunil Sharma*  
**Sunil Sharma**  
**Judge**

**At Lautoka**  
15 August, 2019

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