

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 165 of 2017

[CRIMINAL JURISDICTION]

STATE

V

INOKE MATIA YALIMAI

**Counsel** : Ms. L. Bogitini for the State  
Ms. E. Radrole with Mr. T. Varinava for the Accused

**Hearing on** : 02 - 04 September 2019

**Summing up on** : 05 September 2019

**Judgment on** : 06 September 2019

[The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "SQ". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said complainant.]

JUDGMENT

1. The accused is charged with the following offences;

**REPRESENTATIVE COUNT**

**FIRST COUNT**

*Statement of Offence*

**Sexual Assault:** contrary to section 210 (1) (a) of the Crimes Act, 2009.

*Particulars of Offence*

**INOKE MATIA YALIMAIWAI** between the 1<sup>st</sup> day of December, 2016 to the 24<sup>th</sup> day of December, 2016 at Sigatoka in the Western Division, unlawfully and indecently assaulted **SQ**, by sucking her breast.

**REPRESENTATIVE COUNT**

**SECOND COUNT**

*Statement of Offence*

**Sexual Assault:** contrary to section 210 (1) (a) of the Crimes Act, 2009.

*Particulars of Offence*

**INOKE MATIA YALIMAIWAI** between the 1<sup>st</sup> day of December, 2016 to the 24<sup>th</sup> day of December, 2016 at Sigatoka in the Western Division, unlawfully and indecently assaulted **SQ**, by licking her vagina.

**REPRESENTATIVE COUNT**

**THIRD COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**INOKE MATIA YALIMAIWAI** between the 1<sup>st</sup> day of December, 2016 to the 24<sup>th</sup> day of December, 2016 at Sigatoka in the Western Division, inserted his penis into the vagina of **SQ**, without her consent.

2. The assessors were divided in their opinion. The majority opinion is that the accused is not guilty of the above offences. One assessor opined that the accused is guilty of all three counts as charged.
3. I direct myself in accordance with the summing up delivered to the assessors on 05/09/19 and the evidence adduced during the trial.
4. The only prosecution witness was the complainant. The accused did not give evidence but called four witnesses in his defence.
5. The complainant's evidence was riddled with inconsistencies which were significant. I did not find the account given by her to be reliable given her description of the events. The credibility of the complainant's evidence was further

affected by the evidence given by the fourth defence witness who was in fact a prosecution witness. This witness (DW4), the head girl of the school the complainant attended during the material time, appear to be the first person the complainant opened up to. She was an independent witness whose evidence I found to be credible and reliable. However, according to DW4, she was told by the complainant that the complainant was sexually abused by a different uncle, at a different place and at a different time.

6. The evidence given by the first three defence witnesses, when taken together, clearly established that the accused was not there in Bouwaqa, Vatulele where the three offences were alleged to have been committed, during the month of December 2016. The evidence presented by the prosecution was not capable of rebutting the said position.
7. All in all, I find that the prosecution has failed to prove the three counts against the accused beyond reasonable doubt.
8. I agree with the majority opinion of the assessors and I find the accused not guilty of the three counts.
9. The accused is acquitted of all counts accordingly.



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

Vinsent S. Perera  
JUDGE

**Solicitors:**

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