

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

**CRIMINAL CASE NO. HAC 106 OF 2018**

**BETWEEN** : **STATE**

**AND** : **KEVERIELI VUNISA**

*Counsel* : *Mr. T. Tuenuku for the State*  
*Ms. G. Henao for the Accused*

*Hearing on* : *03<sup>rd</sup> – 04<sup>th</sup> of November 2020*

*Summing up on* : *10<sup>th</sup> of November 2020*

*Judgment on* : *13<sup>th</sup> of November 2020*

**JUDGMENT**

1. The accused, Keverieli Vunisa is charged with a count of Rape, alleged as detailed below to have committed on Lavenia Savai who is his legally married wife.
2. The details of the offence that he was charged by the Director of Public Prosecutions is as follows;

**COUNT**

***Statement of Offence***

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

***Particulars of Offence***

*Keverieli Vunisa, on the 23<sup>rd</sup> of May 2018 at Dreketi Settlement, Nalawa, Ra, in the Western Division, penetrated the vagina of Lavenia Savai with an Ace Syrup Paracetamol bottle.*

3. The accused pleaded not guilty to the charge and the ensuing trial lasted for 2 days. At the trial the complainant Lavenia Savai, her aunt Lavenia Vunivesilevu and Nurse Practitioner Ms. Melaia Busa gave evidence for the prosecution while the accused gave evidence, in defense.
4. At the conclusion of the evidence and after the directions given in the summing up, the three assessors by majority found the accused not guilty to the alleged count of Rape.
5. I direct myself in accordance with the law and the evidence led in this case, inclusive of which I have discussed in my summing up to the assessors.
6. The sole witness to substantiate on the alleged incidents is the PW1, Lavenia Savai. I am mindful that the law requires no corroboration. Therefore it can be acted on the evidence of a sole witness. However, if we are to rely on a sole witnesses' evidence we must be extremely cautious of the credibility and the dependability of such evidence.

### **Analysis**

7. The accused is alleged to have inserted a bottle of Paracetamol into the complainant's vagina. The accused stated that he has been framed as he accused her of extra-marital affairs.
8. I am mindful that the prosecution has the burden of proving their case beyond reasonable doubt and the accused bears no burden of proving anything. Further, even the accused has lied, it should not be considered to strengthen the prosecution case.
9. It is not contested that the complainant has had some injuries on her vaginal walls. The PW3's evidence on that issue is unchallenged. Therefore, the issue would be how did she get injured? The PW1 states that it was due to the insertion of the Paracetamol bottle into her vagina by the accused. The medical

evidence too confirms it as a possibility. There is no explanation by the accused and there is no burden on him to provide any. I have carefully observed all the witnesses and their demeanor. The PW1's evidence has very few inconsistencies and none would be on a fundamental issue. If the PW1 wanted to frame the accused, she need not have all the trouble in meticulously planning a thing like this and caring on a long process including the introduction of a Paracetamol bottle, which would bring her also to ridicule of others and a very uncomfortable position in the society. Having carefully considered all the evidence before me, I have no doubt that the alleged incident is real and a bottle was inserted into her vagina. The next question would be who has done it?

10. The accused denies doing such. It is evident that only the complainant and the accused were in the room that night. Further it is evident that no outsider came and did such a thing. The complainant states that the accused offered to take it out. The accused states that he was asleep until woken up by the complainant. There is no suggestion even that the complainant has done it by herself. The accused unsuccessfully tried to point out that he was not angry with her by the time they went to bed. His evidence was quite inconsistent on this issue. It is evident that he has had reasons to be angry with her. I need not consider whether his act could be justified or not at this stage, as it may only be relevant as a mitigatory factor. All in all, I am convinced beyond reasonable doubt that the accused has inserted the Paracetamol bottle into the vagina of the complainant.
11. It should be remembered that it is the word against the word and the complainant's version is considerably supported by and consistent with the other evidence. The accused's evidence is full of inconsistencies *inter-se* and *per-se*. Therefore, the accused version fails to create any reasonable doubt in the prosecution case. When the prosecution has successfully discharged their burden by proving the elements of the offence beyond reasonable doubt and the accused failed to create any reasonable doubt in the prosecution case, there is no choice but to find the accused guilty of the alleged offence. It is apparent the assessors were not unanimous in not accepting the PW1's version. Out of the panel of 3 assessors, two opined the accused to be not guilty whereas the other assessor opined that the accused to be guilty. Having observed the witnesses and duly considered all the available evidence, I find that the majority of assessors were incorrect in opining the accused not guilty.

12. Therefore with regret, I disagree and overturn the opinion of the majority of assessors and convict the accused of the alleged count of rape.
13. This is the Judgment of the Court.



**Chamath S. Morais**  
**JUDGE**

***Solicitor for the Prosecution :  
Solicitor for the Accused :***

***Office of the Director of Public Prosecution.  
Office of the Legal Aid Commission, Lautoka***