

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 131 OF 2019S

STATE
Vs
MAKITI SERU LEDUA

Counsels : Ms. S. Swaztika for State
Ms. P. Mataika for Accused
Hearing : 23 and 24 March, 2020.
Summing Up : 26 March, 2020.
Judgment : 27 March, 2020.

Judgment

1. On 23 March 2020, the accused pleaded not guilty to the following information, in the presence of his counsel:

“Count One

Statement of Offence

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

Particulars of Offence

MAKITI SERU LEDUA, on the 22nd day of March, 2019 at Vuci Road, Nausori in the Eastern Division, penetrated the vagina of VM with his finger, without her consent.

Count Two

Statement of Offence

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

Particulars of Offence

MAKITI SERU LEDUA, on the 22nd day of March, 2019 at Vuci Road, Nausori in the Eastern Division, had carnal knowledge of VM, without her consent."

2. The matter then proceeded to trial for 2 days on 23 and 24 March 2020. On 26 March 2020, I delivered my summing up before the three assessors. They deliberated on the matter and returned with a unanimous not guilty opinion on count no. 2, but a mixed opinion on count no. 1. Assessor No. 1 and 2 were of the opinion that the accused was not guilty as charged on both counts, while Assessor No. 3 was of the opinion that the accused was guilty as charged on count no. 1.
3. It would appear from the above that all the three assessors did not accept the complainant's version of events on count no. 2, or alternatively, they were not sure of the accused's guilt on count no. 2. As with count no. 1, it would appear Assessor No. 1 and 2 did not accept the complainant's version of events, or alternatively, they were not sure of the accused's guilt. Assessor No. 3 accepted the prosecution's version of events on count no. 1.
4. I had reviewed the evidence called in the trial, and I had directed myself in accordance with the summing up I gave yesterday, to the three assessors.
5. The assessors' opinions were not perverse. It was open to them to reach such conclusion on the evidence. Assessors are there to assist the trial judges come to a decision, on

whether or not the accused was guilty as charged. The assessors represent the public, and their views must be treated with respect.

6. The complainant's story had been put before the three assessors on 23 and 24 March 2020. They had carefully considered it. On count no.1, Assessor No. 1 and 2 did not accept the complainant's story and/or were not sure of the accused's guilt. They were the majority. Assessor No. 3 accepted the complainant's story and was sure of the accused's guilt. He was the minority.
7. On count no. 1, the law required the prosecution to prove the accused's guilt beyond a reasonable doubt. That meant that the prosecution was required to make Assessor No. 1 and 2 sure of his guilt. They had failed to do so. They had failed to prove the accused's guilt beyond a reasonable doubt to Assessors No. 1 and 2. They had only managed to persuade Assessor No. 3 to accept their version of events. He is the minority.
8. In my view, looking at the total evidence, I am persuaded to accept the majority assessors' view on count no. 1. The majority were not sure of the accused's guilt on count no. 1. There was a reasonable doubt in the accused's guilt, and the law demanded that the benefit of that doubt must go to the accused. I therefore find the accused not guilty as charged on count no. 1, and I acquit him accordingly on that count.
9. As for count no. 2, the three assessors were unanimous in their opinion that the accused was not guilty as charged. They appear to reject the prosecution's version of events, which meant they found the complainant's evidence not credible. As I had said before, the assessors represent the public and their views must be treated with respect. As a result of their unanimous not guilty opinion on count no. 2, I accept the assessors' unanimous opinion and find the accused not guilty as charged. I accordingly acquit the accused of count no. 2.

10. In summary, I find the accused not guilty as charged on count no. 1 and 2, and I acquit him accordingly on those two counts. You are free to go home.



A handwritten signature in blue ink, appearing to be "Salesi Temo".

Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**