

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 325 OF 2018S

STATE
Vs
SOVITA TURAGABECI RAWALAI

Counsels : **Ms. S. Sharma for State**
Ms. L. Ratidara and Ms. L. Filipe for Accused

Hearing : **16, 17 and 18 March, 2020.**

Summing Up : **20 March, 2020.**

Judgment : **20 March, 2020.**

JUDGMENT

1. The three assessors had returned with a mixed opinion. Assessor No. 1 found the accused not guilty, while Assessor No. 2 and 3 found the accused guilty as charged.
2. Obviously, the majority had accepted the prosecution's version of events, while the minority had rejected the prosecution's version of events.
3. The above meant that the majority found the complainant a credible witness and accepted her version of events, while the minority considered her not a credible witness and rejected her version of events.

4. The assessors' different opinions were not perverse. It was open to them to reach such conclusion on the evidence.
5. I have reviewed the evidence and directed myself in accordance with the summing up I gave the assessors today.
6. The assessors represent the public and their views must always be treated with respect.
7. Having considered the evidence in its totality, I reach the following conclusion on the facts. The complainant (PW1) was obviously a very naive 18 year old girl. She went with the accused to the drinking session at Jovilisi's house. She remained there at her own free will. She naively chose to go with the accused to the corner of Jovilisi's house. At the corner, in my view, the matter went out of control.
8. In my view, the accused then forced himself on the complainant by strangling her throat with his right hand and threatening to kill her if she raised the alarm. The complainant by virtue of the above, was forced to subdue herself to the will of the accused. In my view, in such a circumstance, there was really no voluntary consent to sex with the accused. If she consented, she consented out of fear of bodily harm to herself.
9. In my view, the doctor's examination so soon after the event, confirmed bruises and abrasions to the complainant's neck, which verified the complainant's version of events. In my view, the accused knew she was not consenting to sex at the time he had sex with her.
10. On the issue of consent, I accept the complainant's version of events, although I find her to be a very naive 18 year old.
11. Given the above, I agree with the majority assessors and reject the minority view. I find the accused guilty as charged and convict him accordingly.

12. Assessors thanked and released.



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.**