

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 420 OF 2018S

STATE

vs

ROBERT MON WAQALEVU

**Counsels : Ms. U. Tamanikaiyaroi and Mr. J. Nasa for State
Ms. P. Mataika and Ms. M. Cobona for Accused**

Hearings : 12, 13, 14 and 17 August, 2020.

Summing Up: 18 August, 2020.

Judgment : 18 August, 2020.

JUDGMENT

1. The three assessors had returned with a unanimous opinion that the accused was not guilty as charged on both counts.
2. Obviously, the three assessors had rejected the prosecution's version of events. It meant that the three assessors were not sure on whether or not to accept the two complainant's evidence as credible.
3. I have reviewed the evidence called in the trial and had directed myself in accordance with the summing up I gave the assessors today.

4. The assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
5. Assessors are there to assist the trial judge 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 law required the prosecution to prove the accused's guilt beyond a reasonable doubt. The complainants' complaints had been put before the three assessors. They had unanimously returned with a not guilty opinion on both counts. That meant they had a reasonable doubt on the two complainants' evidence and version of events. The benefit of that doubt must go to the accused.
7. In my view, this was somewhat a difficult case. I am persuaded, on the evidence, to follow the three assessors' view. There were some evidence regarding the first complainant's pants been on her after she woke up. Her evidence differed with her friend. It created a doubt in the prosecution's case. The heavy drinking by the complainants also showed the type of person and the characters of the complainants.
8. Given the above, I accept the unanimous opinion of the three assessors. I find the accused not guilty as charged on both counts and I acquit him accordingly on both counts.
9. Assessors thanked and are released.



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


Salesi Temo
JUDGE