

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 197 of 2022**

STATE

vs.

**ELIKI ROMULO**

**Counsel:** Ms. K. Semisi for the State  
Ms. R. Nabainivalu for Accused

**Date of Hearing:** 31<sup>st</sup> August 2022

**Date of Closing Submission:** 01<sup>st</sup> September 2022

**Date of Judgment:** 08<sup>th</sup> September 2022

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**JUDGMENT**

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1. The Accused is charged with one count of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act and one count of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act. The particulars of the offences are:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**ELIKI ROMULO** on the on the 13<sup>th</sup> June 2021 at Suva in the Central Division penetrated the vagina of **KARALAINI MUAVOU** with his fingers, without her consent.

**COUNT 2**

*Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM:** *Contrary to Section 275 of the Crimes Act 2009.*

*Particulars of Offence*

*ELIKI ROMULO on the 13<sup>th</sup> June 2021 at Suva in the Central Division, assaulted KARALAINI MUAVOU by pushing the said KARALAINI MUAVOU to the ground and causing the said KARALAINI MUAVOU actual bodily harm.*

2. The Accused pleaded not guilty to the two offences; hence, the matter proceeded to the Hearing. The Hearing commenced on the 31st of August 2022 and concluded on the same day. The Prosecution presented the evidence of two witnesses, including the Complainant. After the Prosecution's evidence, the Court found no evidence to establish the count of Assault Causing Actual Bodily Harm. Hence, the Accused was acquitted of the same pursuant to Section 231 (1) of the Criminal Procedure Act. Subsequently, the Accused gave evidence for the Defence. The Court then heard the oral submissions of the parties. In addition to their oral submissions, the Counsel filed their respective written submissions. Having carefully considered the evidence presented during the Hearing and the respective oral and written submissions of the parties, I now proceed to pronounce the judgment as follows.

**Burden and Standard of Proof**

3. The Accused is presumed to be innocent until proven guilty. The burden of proof of the charge against the Accused is on the Prosecution. It is because the Accused is presumed to be innocent until proven guilty.

4. The standard of proof in a criminal trial is "proof beyond reasonable doubt". The Court must be satisfied that the Accused is guilty of the offence without any reasonable doubt.

#### **Elements of the Offences**

5. The main elements of the offence of Rape as charged are that:
  - i) The Accused,
  - ii) Penetrated the vagina of the Complainant with his fingers,
  - iii) The Complainant did not consent to the Accused to penetrate her vagina with his fingers,
  - iv) The Accused knew or believed or reckless that the Complainant was not consenting for him to insert his fingers in that manner.
  
6. The Prosecution and the Defence tendered the following admitted facts pursuant to Section 135 of the Criminal Procedure Act:
  - i) *The person charged: Eliki Romulo, 18 years old of Namuku Settlement, Vatuwaqa, Unemployed.*
  
  - ii) *Eliki Romulo has been charged with one count of Rape, contrary to section 207 (1) and (2) (b) of the Crimes Act 2009 and one count of Assault Causing Actual Bodily Harm, contrary to section 275 of the Crimes Act 2009.*
  
  - iii) *The complainant is one Karalaini Muavou, 35 years old of Namuku Settlement, Vatuwaqa, Domestic Duties.*
  
  - iv) *Eliki Romulo and the complainant are known to each other and there is no dispute in relation to the identification of the accused person in this matter.*

- v) *On the morning of the 13<sup>th</sup> June 2021 at Nanuku Settlement in Vatuwaqa, at approximately 6am, Elik Romulo met the complainant.*
- vi) *Elik Romulo pulled the complainant to join him and some others at a drinking party.*
- vii) *Elik Romulo pulled the complainant's jacket and her 'sulu' (wrap-around skirt)*
- viii) *The complainant refused to go with Elik Romulo.*
- ix) *The complainant was medically examined at the Valelevu Health Centre by Dr. Stephanie Fong on the 13<sup>th</sup> June 2-21 at 10.35 am.*

#### **Identity of the Accused**

7. According to the evidence presented by the parties and the admitted facts, there is no dispute about the identity of the Accused. The main dispute is whether the Accused had actually penetrated the vagina of the Complainant with his fingers, and the Complainant did not consent to such penetration.

#### **Penetration**

8. Evidence of the slightest penetration of the vagina of the Complainant with the fingers of the Accused is sufficient to prove the element of penetration.

#### **Consent**

9. Consent is a state of mind that can take many forms, from willing enthusiasm to reluctant agreement. In respect of the offence of Rape, the Complainant consents if she had the freedom and capacity to make a choice and express that choice freely and voluntarily. Consent obtained through fear, threat, the exercise of authority, use of force, or intimidation

could not be considered consent expressed freely and voluntarily. A submission without physical resistance by the Complainant to an act of another person shall not alone constitute consent.

10. If the Court is satisfied that the Accused had penetrated the vagina of the Complainant with his fingers and she had not given her consent, the Court is then required to consider the last element of the offence. That is whether the Accused honestly believed, knew, or was reckless that the Complainant was freely consenting to this alleged sexual act. The belief in consent is not the same as the hope or expectation that the Complainant was consenting.

#### **Evidence of the Prosecution**

11. The Prosecution alleges that the Accused penetrated the vagina of the Complainant with his fingers without her consent on the morning of the 13th of June 2021. In the morning, the Complainant had gone to the nearby canteen to buy cigarettes but had to return as the canteen was closed. On her way, she had to walk past the Accused's home, where he was drinking with others. On her way home, the Accused came after her and requested her to join them for drinking. The Complainant ignored him and said that she did not know him. The Accused then demanded her to stand still and talk to him. He then pulled her cardigan while she was still walking. He then pulled her wrap - around 'sulu' with the lace undergarment, tearing them both. The Accused then inserted her vagina with his two fingers three times. The Complainant cried and asked for help from one of her cousins. The Accused then fled the scene.

#### **Evidence of the Accused**

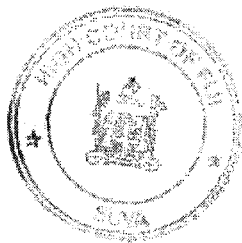
12. On the contrary, the Accused denies this allegation. However, the Accused admitted that he met the Complainant in the morning on her way to the canteen. According to the Accused, he had asked her to join them for drinking. When the Complainant walked without responding, he had pulled her cardigan and accidentally pulled her wrap - around 'sulu'. The Accused further said that he did not insert his fingers into the vagina of the Complainant.

### Evaluation of Evidence

13. Accordingly, the Prosecution and the Defence presented conflicting versions of events. In such circumstances, the Court must consider the whole of the evidence adduced in the trial, including the evidence of the Accused, to determine whether the Prosecution has proven beyond reasonable doubt that the Accused had committed this crime. The task of the Court is not to decide who is credible between the Complainant and the Accused. (*vide Liberato and Others v The Queen ((1985) 159 CLR 507 at 515) Goundar v State [2015] FJCA 1; AAU0077.2011 (2 January 2015).*)
14. In evaluating the evidence, the Court must first look into the credibility or the veracity of the evidence given by the witness and then proceed to consider the reliability or accuracy. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (*vide Matasavui v State [2016] FJCA 118; AAU0036.2013 (30 September 2016. State v Solomone Qurai (HC Criminal - HAC 14 of 2022).*)
15. The Court heard the evidence of the Complainant saying that the Accused came behind her and pulled her wrap - around 'sulu', and damaged her 'sulu' and lace undergarment. He then penetrated her vagina with his two fingers three times. However, the Court heard no evidence explaining the Accused's position when he allegedly penetrated the vagina of the Complainant in that manner. There is no evidence before the Court whether her lace undergarment was torn apart and fell, exposing her vaginal area for the Accused to penetrate. If the Accused was standing behind the Complainant when she was still walking, would it probable or possible for him to penetrate her vagina with his fingers three times. Neither Complainant explained, nor the learned Counsel for the Prosecution asked the Complainant whether the Accused penetrated her vagina over her undergarment or not.
16. In addition to the above-discussed reasons, the Complainant answered affirmatively, saying "yes" when the learned Counsel for the Defence asked her that the only reasons the

Complainant made this allegation was because she was angry, embarrassed and unhappy with the Accused for pulling her jacket, 'sulu' and her undergarment. The learned Counsel for the Prosecution decided not to clarify the above issue during the re-examination.

17. Given these reasons, there is reasonable doubt about the probability of this allegation as complained by the Complainant, thus creating further doubt about the credibility of the evidence given by the Complainant. Accordingly, I find the Prosecution has failed to prove beyond a reasonable doubt that the Accused penetrated the vagina of the Complainant with his fingers without her consent.
18. In conclusion, I find the Accused not guilty of this offence of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and acquitted of the same accordingly.
19. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be 'R.D.R.T. Rajasinghe', written over a horizontal dotted line.

Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

08<sup>th</sup> September 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.