

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 135 OF 2011S

STATE

VS

VILIAME NAICORI

Counsels : **Ms. S. Naidu and Mr. R. Kumar for State**
Mr. S. Waqainabete for Accused

Hearings : **7th, 8th and 9th October, 2013**

Summing Up : **11th October, 2013**

Judgment : **11th October, 2013**

JUDGMENT

1. The three assessors have returned with a mixed verdict, the majority ie. Assessors No. 1 and 3, finding the accused not guilty as charged. The minority ie. Assessor No. 2 had found the accused guilty as charged.
2. Obviously, the majority of the assessors had not accepted the prosecution's version of events and have found they had not proven the accused's guilt beyond reasonable doubt.
3. The minority had accepted the prosecution's version of events and had found that they had proven the accused's guilt beyond reasonable doubt.
4. I have reviewed the evidence called in this trial.

5. I have also directed myself in accordance with the summing up I gave the assessors today.
6. The verdict of the majority and the minority assessors was not perverse. It was open to them to reach such conclusion on the evidence.
7. I am not bound by the opinions of the majority or the minority assessors. They are there to offer opinions to me, as the trial judge, to decide on the guilt or otherwise of the accused.
8. The version of events of both the complainant and the accused were both capable of acceptance, depending on how you view the facts.
9. They both agreed they had sexual intercourse, at the material time, thereby satisfying the 1st element of rape.
10. The second element of rape ie. consent was problematic, of course, for the majority and minority assessors.
11. In my view, the complainant said she did not consent to sex with the accused, at the material time. She said, the accused threw her forcefully on the floor of the cave, to enable him to subdue her. In my view, the effect of the doctor's medical report, stating that there were abrasions on the left behind of the complainant's shoulder, did lend weight to her version of events that she did not consent to sex. These injuries, although healed, was discovered by the doctor, 12 days after the event.
12. Coupled with the above, the way the accused re-acted to been cross-examined by the prosecutor after giving sworn evidence, did not put him in a good light. I observed him to be a very evasive witness. He evaded most of the questions thrown by the prosecution. He was not forthright, leading me to the conclusion that he was not a credible witness. Had he been forthright with his answers, I would possibly have reached a different conclusion.
13. As a result of the above, I found the complainant a more credible witness than the accused, leading me to accept her as a credible witness. I accept her evidence that she did not consent to sex with the accused, at the material time, and that the accused knew, she was not consenting to sex, at the material time. If the complainant consented to sex at the material time, why the need to throw her on the floor, resulting in abrasions to the back of her left shoulder.
14. I accept the minority opinion and I accept the prosecution's version of events, and on the evidence, I find the accused Guilty As Charged and convict him accordingly. I reject the majority's opinion and the accused's denials.

15. Assessors thanked and released.

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JUDGE

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